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WILLIAM C. COCHRAN, L.L.D.

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COLLECTIONS

THE WESTERN RESERVE HISTORICAL SOCIETY

Issued January 1920

THE WESTERN RESERVE AND THE FUGITIVE SLAVE LAW

A PRELUDE TO THE CIVIL WAR

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CLEVELAND, OHIO

1920

STATE OF OHIO

These Articles of Incorporation of The Western Reserve Historical Society

Witnesseth, That we, the undersigned, all of whom are citizens of the State of Ohio, desiring to form a corporation not for profit, under the general corporation laws of said State, do hereby certify:

First. The name of said corporation shall be The Western Reserve Historical Society.

Second. Said corporation shall be located and its principle business transacted at the City of Cleveland, in Cuyahoga County Ohio.

Third. The purpose for which said corporation is formed is not profit, but is to discover, collect and preserve whatever relates to the history, biography, genealogy, and antiquities of Ohio and the West; and of the people dwelling therein, including the physical history and condition of the State; to maintain a museum and library, and to extend knowledge upon the subjects mentioned, by literary meetings, by publication and by other proper means.

In Witness Whereof, We have hereunto set our hands, this seventh day of March, A. D., 1892.

Henry C. Ranney	Charles C. Baldwin
D. W. Manchester	David C. Baldwin
Amos Townsend,	Percy W. Rice,
William Bingham,	Jas. D. Cleveland,

A. T. Brewer

INTRODUCTORY NOTE

At this time, when the whole world is considering the possibility of a League of Nations, which shall secure even the feeblest from the aggressions of the strong, which shall afford a means for settling disputes between nations without war, and which shall relieve all from the necessity of maintaining huge armies and armaments for self protection; we can gain much by studying anew the history of the Confederation once formed between the thirteen colonies established on our Atlantic seaboard, the causes for its early failure, the difficulties attending the formation of "a more perfect Union," and the provisions embodied in the new Constitution which constantly disturbed the relations of the component States and finally led to internecine war, the elimination of the disturbing elements and the perfection of a Union unparalleled for its strength and freedom from militarism.

In addition to the works of former historians, the sources of their information, the reports of United States and State courts and the Statutes of Ohio, the author has had access to the valuable collection of newspapers, pamphlets and documents in the possession of the Western Reserve Historical Society, at Cleveland, and is greatly indebted to the officers of that Society for the facilities they have afforded for conducting his investigation. This fine collection might (and should) be further enriched, if individuals, who have preserved files of local newspapers and periodicals, pamphlets, diaries, and private correspondence concerning public affairs, would give

them to the Western Reserve Historical Society to be classified, catalogued, preserved and made easily accessible for students and historians. To the pleasures of the collector, such individuals will thus add the satisfaction of contributing to the public welfare and having their names identified with an institution which will outlive most families and village communities.

W. C. C.

Cincinnati, March 29, 1919.

THE WESTERN RESERVE *and* THE FUGITIVE SLAVE LAW

THE ELEMENTS OF DISCORD

ARTICLE I.

"SECTION 2. Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union according to their respective Numbers, which shall be determined by adding to the whole Number of Free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other Persons."

ARTICLE II.

"SECTION 1. Each State shall appoint in such Manner as the Legislature thereof may direct, a Number of Electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress."

ARTICLE IV.

"SECTION 2. No person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due."[1]

Any one, who would fully understand the attitude of the people on the Western Reserve previous to the Civil War and during Reconstruction, should acquaint himself with the origin and history of the above clauses of the Constitution and the various laws, Federal and State, enacted in accordance therewith.

At the time the Constitution was adopted, slavery had been abolished or was in process of extinction in all but six of the States, and in three of these, Maryland, Virginia and North Carolina, there was persistent agitation by leading citizens for its gradual abolition. There was, however, no disposition to subject slaveholders to immediate pecuniary loss. The general expectation was that slavery would cease

[1] Ben Perley Poore, *Charters and Constitutions*, Vol. I, pp. 14, 17, 19.

to exist in all the States, except possibly South Carolina and Georgia, before twenty-one years had elapsed. This expectation is reflected in Section 9, Article I, of the Constitution, which fixes the year 1808 as the period, prior to which Congress may not prohibit "The Migration or Importation of such Persons as any of the States now existing shall think proper to admit" [2]—in other words, slaves. This prospect made the non-slavery delegates acquiesce more readily in the above provisions, insisted upon by the extreme pro-slavery men. At the same time, it made them particular that the system which they detested should not be mentioned by name in the great charter of the Union.

The apportionment of taxes and representation based on the number of all free persons, plus three-fifths of those who were not free, was an arbitrary measure which had no consistent theory to support it. In the thought of pro-slavery men, a negro was nothing but a domestic animal, a chattel, which could be bought and sold and set to work in the fields like any other animal. He had neither character nor intelligence and was in no wise to be considered, or treated as a man—much less as a citizen.

Why, then, should he not be excluded from the enumeration on which "Representation and direct Taxes" were to "be apportioned among the several States," just as "Indians not taxed" were?

Was the enslaved African considered higher in the social and political scale than a free Indian?

Was it because a slave is property, and property should be considered when taxes are to be apportioned and levied?

If so, why was not all property, north and south, taken into consideration at its true value in money?

Slaves were not taken into consideration in apportioning representation among the counties in

[2] *Charters and Constitutions*, Vol. I, p. 16.

a slave State. Then, why should they have been considered in apportioning representation among the States?

If slaves were to be counted at all, why should not all be counted? Why three-fifths, rather than one-half, one-third, or one-tenth?

These and many other questions have puzzled students of our national Constitution in the past, and will continue to puzzle students in the future; the more, as it is being held up as a model after which all future republics should be formed. The excuse, rather than justification, commonly offered is like that advanced by Von Bethmann Hollweg and Kaiser Wilhelm for invading Belgium in August, 1914. It was wrong, but it was thought necessary to carry out the object which the delegates to the Constitutional Convention had in view—a Union, "perfect" or otherwise, of all the States.

GENESIS OF THE THREE-FIFTHS RULE AND FUGITIVE SLAVE PROVISION.

A Confederation of States had been formed a little over nine years before, but the Articles of Confederation contained no provisions like those above quoted from the first and fourth Articles of our present Constitution.

> "Article 5. * * * No State shall be represented in Congress by less than two nor more than seven members. * * * In determining questions in the United States in Congress assembled, each State shall have one vote."
>
> "Article 8. All charges of war and all other expenses that shall be incurred for the common defence or general welfare * * * shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled shall, from time to time, direct and appoint." [3]

[3] *Charters and Constitutions*, Vol. I, pp. 8–9.

Thus, the troublesome question of apportionment for representation and taxation was settled in the Constitution adopted by the Constitutional Congress, November 15, 1777, and ratified by the signatures of delegates from the several States, at Philadelphia, July 9, 1778. Thus, too, the "Sovereignty" of the respective States was protected against a national power created by themselves.

It was not settled without debate. In the original draft of a Constitution it was proposed that the Treasury "should be supplied by the several colonies in proportion to the number of inhabitants of every age, sex and quality, except Indians not paying taxes, in each colony."

Samuel Chase, of Maryland, moved that the quotas should be fixed, not by the number of inhabitants of every condition, but by that of the "white inhabitants." He admitted that theoretically taxation should always be in proportion to property; but maintained that it could never be carried out in practice, because of the difficulties in discovering and fixing the value of property. Negroes are property and, as such, cannot be distinguished from lands or personalty held in those States where there are few slaves. There is no more reason for taxing the Southern States on a slave's head, than for taxing Northern ones on their heads of cattle. There spoke the logician; but his logic was sharpened by the interest of his State in shifting the burden of taxation from Southern to Northern States.[4] John Adams, of Massachusetts, argued that the numbers of people were taken as a fair index of the wealth of a State, and not as subjects of taxation; that it was of no consequence by what name you called your people, whether by that of free men or of slaves. "Suppose," he said, "one half the laborers of a State could, in the course of one night be transformed into slaves, would

[4] Elliott, *Debates on the Federal Constitution*, Vol. I, 70 up.

the State be made poorer, or the less able to pay taxes?" [5] There also spoke the logician. But it is quite probable that, if the question had been one of apportioning representation instead of taxation, Chase would have advocated the enumeration of all slaves on the ground laid down by Adams, and Adams would have argued that slaves should not be counted as freemen. Chase's motion to amend was defeated by the votes of the seven Northern States—Delaware, Maryland, Virginia, North Carolina and South Carolina voting aye, Georgia divided. [6]

Dr. John Witherspoon, of New Jersey, President of Princeton College, was of opinion that the value of lands and houses was the best estimate of wealth and that it was practicable to obtain such a valuation [7] and his suggestion was finally adopted. Before the vote was taken, however, Benjamin Harrison, of Virginia, proposed, as a compromise, that two slaves should be counted as one freeman. [8] But little notice was taken of it, at that time.

The article in regard to giving each State an equal vote was opposed on the ground that it was unjust to the States having a large population. Why should little Delaware offset the vote of Pennsylvania, or little Rhode Island offset the vote of Virginia? James Wilson, of Pennsylvania, thought that taxation should be in proportion to wealth, but that representation should accord with the number of freemen. "It is strange," he said, "that annexing the name of 'State' to ten thousand men should give them an equal right with forty thousand. * * * Shall two millions of people put it in the power of one million to govern them as they please?" [9] But, in the end, the "State Sovereignty" idea prevailed and the States confederated on the basis of equality.

When the delegates of the several States came

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[5] Elliott, I., 71.
[6] Elliott, I., 72.
[7] Ibid., 73–4.
[8] Ibid., 73.
[9] Ibid., 77, 78.

together to act on the proposed Constitution, Pennsylvania moved to expunge the word "white" in the paragraph of the 9th article, fixing the quota of land forces to be furnished from each State "in proportion to the number of white inhabitants in such State." But the motion was defeated by 3 ayes, 7 noes, and 1 divided.[10]

In practice, the scheme of a Confederacy of independent "Sovereign States," each having an equal vote in Congress without reference to population or wealth, and each retaining within itself the power of laying and levying taxes for national purposes, failed to work. Congress designated from time to time the number of troops and the sums of money necessary for carrying on the war, but the "Sovereign States" were slow in responding. The State legislatures could not be always in session and it was no light matter to call them together between sessions. The several legislatures indulged in debates about certain requisitions, as if each had the right to decide for itself whether they were just or necessary, and whether Congress had made a fair apportionment. Many of the States claimed that they had contributed so many more men and so much more money and supplies than others that they ought to be exempt. Congress was without power to enforce the filling of any quota, or the payment of any assessment. "Sovereign States" were not to be coerced. The legislatures of New Jersey and Connecticut had expressly refused to comply with requisitions of Congress and had transmitted copies of such resolutions to Congress.[11] In December, 1782, Virginia, by resolution of both Houses of the Legislature, limited its contribution to £50,000, Virginia currency, toward the demands of Congress.[12]

The legislature of New York in the summer of 1782 passed resolutions declaring that:—

[10] Elliott, I., 90.

[11] Elliott, V.; 32, 36, 119, 207, 264.

[12] Bancroft, *United States*, VI., 63.

"the Confederation was defective in not giving Congress power to provide a revenue for itself, or in not investing them with funds from established and productive sources; and that it would be advisable for Congress to recommend to the States to call a general convention, to revise and amend the Confederation."[13]

On February, 1783, Congress, in committee of the Whole, decided by a vote of eight to one, (1) that a valuation of land within the United States as directed by the Articles of Confederation should be immediately attempted; (2) that each State should be called on to make a return of the number of acres granted to or surveyed for any person and also the number of buildings within it; but, by a vote of 5 to 4, (3) that the States should not be called upon to return an estimate of the value of their lands, with the buildings and improvements therein. In the discussion of these propositions it was pointed out that great inequalities and dissatisfaction were sure to result, as had already been demonstrated in an experiment in Virginia, and that a comparison of average valuation of land for State taxation in Pennsylvania and Virginia showed the latter to amount to fifty per cent more than the former, although the real value of land in the former was confessedly thrice that of the latter.[14] Every one familiar with local appraisements of land for taxation and the work of State and municipal boards of equalization knows the difficulty to be encountered and the complaints which follow. But these difficulties are small as compared with those encountered in the attempt to secure returns and proper valuation of personal property.

It was proposed that each State should nominate one commissioner and the thirteen should act as a board to settle the valuation. This was objected to on the ground that such commissioners would regard themselves as agents for their respective

[13] Elliott, V., 117–18.

[14] Elliott, V., 46–47.

States, and it was argued that commissioners appointed by Congress would be more impartial. Several members declared themselves as opposed to the whole scheme of valuation of land and in favor of substituting numbers of the inhabitants as the rule for apportioning taxes. The whole matter was referred to a special committee to draw up a proper act.[15] On March 6, 1783, this committee reported making the following recommendation, among others:—

> "11. That as a more convenient and certain rule of ascertaining the proportions to be supplied by the States, respectively, to the common treasury, * * * it shall be supplied by the several States in proportion to the number of inhabitants, of every age, sex and condition, except Indians not paying taxes in each State; which number shall be triennially taken and transmitted to the United States in Congress assembled, in such mode as they shall direct and appoint; provided always that in such numeration no persons shall be included who are bound to servitude for life, according to the laws of the State to which they belong, other than such as may be between the ages of ———— years."[16]

This recommendation was discussed on March 27. Bland and Lee, of Virginia, still thought the value of land the best rule. Madison, thought the value of land could never be justly or satisfactorily obtained; that it would be ever a source of contentions among the States. Gorham, of Massachusetts, represented in strong terms, the inequality and clamors produced by valuations of land in the State of Massachusetts, and the probability of the evils being increased among the States themselves, which were more likely to be jealous of each other. Wilson, of Pennsylvania, said he was in Congress when the Articles of Confederation directing a value of land were agreed to; that the impossibility of compromising the different ideas of the eastern and southern States, as to the value of slaves as compared with

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[15] Elliott, V., 48, 49.

[16] Ibid., 62 to 64.

whites, led to its adoption. Clark, of New Jersey, said he also was in Congress when that rule was adopted, that the southern States would have agreed to numbers in preference to land, if half their slaves only had been included, but that the eastern States would not concur in that proposition. It was finally agreed that instead of fixing the proportion of negroes to be counted by ages, it should be fixed by absolute numbers and the clause was recommitted so as to have that done.[17]

On Friday, March 28, the committee reported that two blacks should be rated as one freeman. Carroll, of Maryland, thought four to one a better ratio, but four members, Wolcott, Higginson, Holton and Osgood, favored four to three, and Rutledge, of South Carolina, thought three to one the correct ratio. A motion for rating slaves as three to two failed to carry—New Hampshire, Connecticut, New Jersey, Pennsylvania, and Delaware, aye, 5; Massachusetts, Maryland, Virginia, North Carolina, South Carolina, no, 5; and Rhode Island, divided. After some further discussion, in which Lee, of Virginia, gave it as his opinion that two slaves were not equal to one freeman, Madison, who was adept in framing compromises, seized the psychological moment and proposed that slaves should be rated as five to three, and the article was thus amended by a vote of New Hampshire, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, aye, 7; Rhode Island, Connecticut, no, 2; Massachusetts, divided, 1. On the adoption of the article as amended the vote was a tie, Massachusetts, Rhode Island, South Carolina, Connecticut and Delaware voting, no; and Pennsylvania not voting.[18]

On April 1, 1783, Hamilton, of New York, who had been absent when these votes were taken, moved a reconsideration and, as it was now quite apparent

[17] Elliott, V., 78–9.

[18] Ibid.,79–80.

to all that some change in the manner of apportioning taxes was necessary, and that the rule of five to three came nearer to "splitting the difference" than any that had been suggested, the article, as so amended, was adopted without opposition.[19]

An ADDRESS TO THE STATES drawn up by Mr. Madison was passed *nem. con.* on April 26, 1783, and sent out with the proposed amendments to the Articles of Confederation, asking them to instruct their respective delegates to agree to the same. The Address said of the rule for supplying the common treasury "by the several States in proportion to the whole number of white and other free citizens and inhabitants, of every age, sex and condition, including those bound to servitude for a term of years, and three-fifths of all other persons * * * except Indians not paying taxes:"[20]

> "Although not free from objections, [it] is liable to fewer than any other that could be devised. The only material difficulty which attended it in the deliberation of Congress, was to fix the proper difference between the labor and industry of free inhabitants and all other inhabitants. The ratio agreed on was the effect of mutual concessions."[21]

Nothing but criticism and objections to these proposed amendments and the suggestion of numerous others resulted from this "Address." Things went from bad to worse. A convention of delegates met at Annapolis in September, 1786, and recommended the calling of a convention of all the States to revise, amend or alter the Articles of Confederation, so as to make the government more efficient. The delegates from New York were instructed by its legislature to move in Congress for the calling of such a convention.[22] This, in the opinion of Madison "conduced much to decide the point," and on February 21, 1787, Congress adopted a resolution calling a

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[19] Elliott, V., 81.
[20] Elliott, I., 95.
[21] Elliott, I., 98–9.
[22] Elliott, I., 119; V., 96.

"convention of delegates, who shall have been appointed by the several States, [to] be held at Philadelphia, for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress and the several legislatures such alterations and provisions therein as shall, when agreed to in Congress, and confirmed by the States, render the federal Constitution adequate to the exigencies of government and the preservation of the Union."[23]

The urgent need for such a convention was set out in a letter by James Madison to Edmund Randolph, Governor of Virginia, dated February 25, 1787.

"Our situation is becoming every day more and more critical. No money comes into the federal treasury; no respect is paid to the federal authority; and people of reflection unanimously agree that the existing Confederacy is tottering to its foundation. Many individuals of weight, particularly in the eastern district, are suspected of leaning toward monarchy. Other individuals predict a partition of the States into two or more confederacies. It is pretty certain that, if some radical amendment of the single one cannot be devised and introduced, one or the other of these resolutions—the latter no doubt—will take place."[24]

Another letter from Madison to Randolph, dated April 8, 1787, sets forth some of the evils to be corrected and some of the obstacles to be overcome. He says:—

"I hold it for a fundamental point that an individual independence of the States is utterly irreconcilable with the idea of an aggregate sovereignty. * * *

The first step to be taken is, I think, a change in the principles of representation. According to the present form of the Union, an equality of suffrage, if not just towards the larger members of it, is at least safe to them, as the liberty they exercise of rejecting or executing the acts of Congress is uncontrollable by the nominal sovereignty of Congress. Under a system which would operate without the intervention of the States, the case would be materially altered. A vote from Delaware would have the same effect as one from Massachusetts or Virginia.

Let the national government be armed with a positive and complete authority in all cases where uniform measures

[23] Elliott., I., 120. [24] Ibid., V., 106.

are necessary, as in trade, &c, &c. * * * Let this national supremacy be extended to the judiciary department.

The change in the principle of representation will be relished by a majority of the States, and those too of most influence. The Northern States will be reconciled to it by the actual superiority of their populousness; the Southern, by their expected superiority on this point. This principle established, the repugnance of the large States to part with power will in a great degree subside, and the smaller States must ultimately yield to the predominant will." [25]

In another place he says:

"But the radical infirmity of the 'Articles of Confederation' was the dependence of Congress on the voluntary and simultaneous compliance with its requirement by so many independent communities, each consulting more or less its particular interests and convenience, and distrusting the compliance of others." [26]

The day appointed for the meeting of the Convention was the second Monday in May, 1787, but the 25th was the first day upon which a sufficient number of members appeared to represent a majority of the States. They then elected George Washington their President and proceeded to business. [27] The sessions lasted from May 25 to Nov. 17, when the Constitution in its final form was signed by delegates representing a majority of the States and sent to the respective States for ratification. There were well-nigh irreconcilable differences of opinion on many points, and the debates, always animated, seem to have been marked at times with ill temper. [28]

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[25] Elliott, V., 107. [26] Ibid., 112. [27] Elliott, I., 120.

[28] It is interesting at this time, when it is seriously proposed to form a League of Nations, to settle international disputes and secure peace, to follow these debates and study with care the solution of questions which are bound to arise in any such attempt. The first and most important question will be in what proportions shall the respective nations be represented in such a League. Shall the greatest have only the same vote in determining questions arising as the least; or shall representation be apportioned to the nations on the basis of comparative populations, or comparative wealth? How shall the League arrive at and enforce its decrees? How shall it be provided with funds, ships, armies, etc., to carry out any of its objects? Shall it be through the voluntary contributions of the constituent nations? The failure of the Articles of Confederation to secure

The delegates to the Constitutional Convention were all impressed with the weakness of the existing Confederation and the necessity of strengthening the central government, but they were divided, by conflicting interests and jealous fears, into many hostile groups and it seemed, at times, as though it would be impossible to reach an agreement. The majority of the delegates, like Madison, came to the Convention with the settled purpose of doing away with the Confederacy of "independent sovereign States" and of framing a central government, which should have supreme control in regard to raising revenues, armies, etc., and an independent executive and judiciary to compel the people of the respective States to respect its laws. A strong minority, however, wished only to patch up the old Articles of Confederation and still retain the feature of independent State action on all matters recommended by Congress. They also were very determined to adhere to the existing system of voting by States—each State to have an equal vote, regardless of size, wealth, or population. This was the attitude of the small States, generally.[29] One may infer, with reas-

money, arms and men during the war of the Revolution; and the failure of the German Diet, in 1866, to restrain its most powerful member, Prussia, in its open defiance of the Diet's decision of its dispute with Austria over Schleswig-Holstein, furnish instructive object lessons. Much also can be learned from the debates in the Constitutional Convention of 1787. The delegates may not have been infallible, but they were, probably, the wisest and most experienced statesmen of their day and they went about their work with all due seriousness. That their views were influenced largely by the interests of the respective states they may have represented, is apparent, and the same thing may be expected of any assembly of delegates convened for the purpose of organizing a League of Nations.

[29] Rhode Island, the smallest of the States, having an area of only 1,248 square miles, refused to send delegates to, or have anything to do with, the Convention. New Hampshire, with an area of only 9,341 square miles, much of it mountainous and sparsely settled, was not represented until the Convention had been in session two months. Oddly enough, a majority of the delegates from New York, with its area of 58,768 square miles (then including Vermont) and its great agricultural and commercial advantages, sided with the little States and vigorously opposed the substitution of representation in proportion to numbers, for the existing method of voting by States, regardless of size, or population. When the principle of representation in proportion to numbers was finally adopted, Yates and Lansing, of New York, left the Convention, never to return, as did Luther Martin, of Maryland.

onable certainty, whether a delegate came from a large or a small State, by his attitude on this question, which was the first one to be settled by the Convention.[30]

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[30] Mr. Brearly, of New Jersey, said, "It had been much agitated in Congress at the time of forming the Confederation and was then rightly settled by allowing to each sovereign State an equal vote. * * * There will be three large States, and ten small ones. The large States, by which he meant Massachusetts, Pennsylvania and Virginia, will carry everything before them. * * * When the proposition for destroying the equality of votes came forward, he was astonished, he was alarmed." Mr. Patterson, also of New Jersey, "considered the proposition for a proportional representation as striking at the existence of the lesser States. * * * He said there was no more reason that a great individual State, contributing much, should have more votes than a small one contributing little, than a rich individual citizen should have more votes than an indigent one. * * * He alluded to the point, thrown out by Mr. Wilson, of the necessity to which the large States might be reduced, of confederating among themselves, by a refusal of the others to concur. Let them unite if they please, but let them remember that they have no authority to make others unite. *New Jersey will never confederate on the plan before the committee.* She would be swallowed up. * * * He would not only oppose the plan here, but, on his return home, do everything in his power to defeat it there." Mr. Wilson, of Pennsylvania, * * * entered elaborately into the defence of a proportional representation, stating, for his first position, that as all authority was derived from the people, equal numbers of people ought to have equal numbers of representatives. * * * Are not the citizens of Pennsylvania equal to those of New Jersey? Does it require one hundred and fifty of the former to balance fifty of the latter? * * * If the small States will not confederate on this plan, Pennsylvania, and he presumed other States, *would not confederate on any other.* If New Jersey will not part with her sovereignty, it is vain to talk of government." (Elliott, V., 175 to 177 incl.)

Two days later, Mr. Rutledge, of South Carolina, "proposed that the proportion of suffrage in the first branch should be according to the quotas of contribution. The justice of this rule, he said, could not be contested. Mr. Butler, also of South Carolina, urged the same idea; adding, that money was power; and that the States ought to have weight in the government in proportion to their wealth. Mr. Dickinson, of Delaware, contended for the *actual* contributions of the States as the rule of their representation, and suffrage in the first branch. By thus connecting the interests of the States with their duty, the latter would be sure to be performed. (Ibid. p. 178.)

"The question being about to be put, Dr. Franklin said, he had thrown his ideas of the matter on a paper; which Mr. Wilson read to the committee, in the words following:—

'Mr. Chairman: It has given me great pleasure to observe, that till this point—the proportion of representation—came before us, our debates were carried on with great coolness and temper. If anything of a contrary kind has on this occasion appeared, I hope it will not be repeated; for we are sent here to *consult*, not to *contend*, with each other, and declarations of a fixed opinion, and of determined resolution never to change it, neither enlighten nor convince us. Positiveness and warmth on one side naturally beget their like on the other, and tend to create and augment discord and division, in a great concern wherein harmony and union are extremely necessary to give weight to our councils, and render them effectual in promoting and securing the common good.

* * * 'I now think the number of representatives should bear some proportion to the number represented, and that the decisions should be by the majority

In order to bring the question to a point, King of Massachusetts, and Wilson, of Pennsylvania, moved (June 11, 1783);—

> "that the right of suffrage in the first branch of the national legislature ought not to be according to the rule established in the Articles of Confederation, but according to some equitable ratio of representation."

and on that question, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, and Georgia, voted aye, 7; New York, New Jersey and Delaware, no, 3; Maryland, divided.[31]

It was then moved by Mr. Rutledge, seconded by Mr. Butler, both of South Carolina, to add to the words "equitable ratio of representation," at the end of the motion just agreed to, the words "according to the quotas of contribution."

On motion of Mr. Wilson, of Pennsylvania, seconded by Mr. Pinckney, of South Carolina, this was postponed in order to add, after the words "equitable ratio of representation" the words following—"in proportion to the whole number of white and other free citizens and inhabitants of every age, sex and condition, including those bound to servitude for a term of years, and three-fifths of all other persons

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of members, not by the majority of the states. This is objected to from an apprehension that the greater states would then swallow up the smaller. I do not at present clearly see what advantage the greater states could propose to themselves by swallowing up the smaller, and therefore do not apprehend they would attempt it. * * * But, sir, in the present mode of voting by states, it is equally in the power of the lesser states to swallow up the greater; and this is mathematically demonstrable. * * *

'The greater states, sir, are naturally as unwilling to have their property left in the disposition of the smaller, as the smaller are to have theirs in the disposition of the greater. * * * I beg leave to propose, for the consideration of the committee, another mode, which appears to me to be as equitable, more easily carried into practice, and more permanent in its nature.

'Let the weakest state say what proportion of money or force it is able and willing to furnish for the general purposes of the Union;

'Let all the others oblige themselves to furnish each an equal proportion;

'The whole of these joint supplies to be absolutely in the disposition of Congress;

'The Congress, in this case, to be composed of an equal number of delegates from each State;

'And their decisions to be by the majority of individual members voting.' "
(Ib. pp. 179–80).

[31] Elliott, V., 181.

> Was it probable that the states would adopt and ratify a scheme which they had never authorized us to propose * * * We see by their several acts in relation to the plan of revenue proposed by Congress in 1783 * * * what were the ideas they then entertained."[33]

Mr. Pinckney, of South Carolina, said: "The whole comes to this * * *. Give New Jersey an equal vote and she will dismiss her scruples and concur in the national system."[34]

Mr. Hamilton, of New York, could, by no means, accede to the sentiments of his colleagues.[35]

Criticising Mr. Patterson's plan of government he said, among other things:

> "Another destructive ingredient in the plan is that quality of suffrage which is so much desired by the small States. It is not in human nature that Virginia and the large States should consent to it; or, if they did, that they should long abide by it. It shocks too much all ideas of justice."[36]

Mr. Madison, of Virginia, observed, regarding Mr. Patterson's plan, that the violators of the Federal Articles had been numerous and notorious. Among the most notorious was an act of New Jersey herself; by which she *expressly refused* to comply with a constitutional requisition of Congress. Connecticut had to be bribed by a donation of public land (The Western Reserve) to acquiesce in a decree constitutionally awarded against her claim on the territory of Pennsylvania.[37]

He begged them to consider the situation in which they would remain, in case their pertinacious adherence to an inadmissible plan should prevent the adoption of any plan. He said:

> "Let the union of the states be dissolved and one of two consequences must happen. Either the states must remain individually independent and sovereign; or two or more confederacies must be formed among them. In the first event, would the small states be more secure against the ambition

[33] Elliott, V., 193. [34] Ibid., 197. [35] Ibid. 198.
[36] Ibid., 201. [37] Ibid., 207–208.

* * * except Indians not paying taxes,"—this being the rule recommended to the States by Congress in April, 1783.

Mr. Gerry, of Massachusetts, thought property not the rule of representation. Why, then, should the blacks, who were property in the South, be in the rule of representation, more than the cattle and horses of the North?

On the question,—Massachusetts, Connecticut, New York, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, and Georgia voted aye, 9; New Jersey and Delaware, no, 2.

Mr. Sherman, seconded by Mr. Ellsworth, both of Connecticut, moved that each State shall have one vote in the second branch. Everything, Mr. Sherman said, depended on this. The smaller States would never agree to the plan on any other principle than an equality of suffrage in this branch.

Connecticut, New York, New Jersey, Delaware, and Maryland, voted aye, 5; Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, no, 6. It was then moved that the ratio of representation in the second branch be the same as in the first and carried by the same vote.[32]

All this was in committee of the Whole and not binding until reported to and formally confirmed by the Convention. So the discussion went right on as if nothing had been settled. Mr. Patterson, of New Jersey, and Mr. Lansing, of New York, made the point that the call for the Convention and the commissions of the delegates limited the delegates to amendments to the Articles of Confederation.

Mr. Lansing said:

> "New York would never have concurred in sending deputies to the Convention, if she had supposed the deliberations were to turn on a consolidation of the States and a national government.

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[32] Elliott, V., 181–2.

and power of their larger neighbors, than they would be under a general government pervading with equal energy every part of the empire, and having an equal interest in protecting every part against every other part? In the second, can the smaller expect that their larger neighbors would confederate on the principle of the present Confederacy, which gives to each member an equal suffrage; or that they would exact less severe concessions from the smaller states, than are proposed in the scheme of Mr. Randolph?

The great difficulty lies in the affair of representation, and if this could be adjusted, all others would be surmountable. It was admitted by both the gentlemen from New Jersey, (Mr. Brearly and Mr. Patterson,) that it would not be *just to allow Virginia*, which was sixteen times as large as Delaware, an equal vote only. Their language was, that it would not be safe for Delaware to allow Virginia sixteen times as many votes."[38]

On the question moved by Mr. King, of Massachusetts, whether Mr. Randolph's plan for a national government should be adhered to, as preferable to those of Mr. Patterson for a modified confederacy, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, and Georgia voted aye, 7; New York, New Jersey, and Delaware, no, 3; Maryland divided.[39]

The questions discussed in Committee of the Whole were then transferred to the Convention, and reargued at great length.

After a particularly tedious debate participated in by Luther Martin who occupied nearly two whole days, and Messrs. Lansing, Williamson, Madison, Wilson, and Sherman, Dr. Franklin said that it was time to apply humbly "to the Father of lights to illuminate our understandings" and proposed that "prayers imploring the assistance of Heaven and its blessings on our deliberations be held every morning before we proceed to business." He uttered a solemn warning that if they remained—

"divided by little partial local interests; our projects will be confounded; and we ourselves shall become a reproach and by-

[38] Elliott, V., 210–11. [39] Ibid., 211.

word down to future ages. And, what is worse, mankind may hereafter, from this unfortunate instance, despair of establishing governments by human wisdom, and leave it to chance, war and conquest."[40]

Mr. Madison:—

"prayed them to ponder well the consequences of suffering the Confederacy to go to pieces. * * * The weakness and jealousy of the small states would quickly introduce some regular military force, against sudden danger from their powerful neighbors. The example would be followed by others, and would soon become universal * * * Throughout all Europe, the armies kept up under the pretext of defending, have enslaved, the people."[41]

Mr. Hamilton pointed out another consequence "of a most serious nature":—

"Alliances will immediately be formed with different rival and hostile nations of Europe, who will foment disturbances among ourselves, and make us parties to all their own quarrels. Foreign nations having foreign dominion are, and must be, jealous of us. * * * It had been said, that respectability in the eyes of foreign nations was not the object at which we aimed; that the proper object of republican government was domestic tranquility and happiness. * * * No government could give us tranquility and happiness at home, which did not possess sufficient stability and strength to make us respectable abroad. This was the critical moment for forming such a government."[42]

Mr. Bedford, of Delaware, said:—

"the little states are willing to observe their engagements, but will meet the large ones on no other grounds but that of the Confederation. We have been told with a dictatorial air, that this is the last moment for a fair trial in favor of a good government. It will be the last, indeed, if the propositions reported from the committee go forth to the people. He was under no apprehensions. The large states dare not dissolve the Confederation. If they do, the small ones will find some foreign ally, of more honor and good faith, who will take them by the hand and do them justice.[43]

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[40] Elliott, V., 253–4.
[41] Ibid., 257.
[42] Ibid., 258–9.
[43] Ibid. V., 268.

Big talk from a little state, threatening to take the very course which Hamilton had pointed out as one of the greatest evils of disunion!

A suggestion of compromise, first thrown out by Mr. Sherman in Committee of the Whole, June 11, and repeated in Convention, June 20, was taken up on June 29th and elaborated by Dr. Johnson and Mr. Ellsworth, the latter of whom moved its adoption. As stated by Dr. Johnson:—

> "in some respects, the states are to be considered in their political capacity, and, in others, as districts of individual citizens. The two ideas embraced on different sides, instead of being opposed to each other, ought to be combined—that in *one* branch the *people* ought to be represented, in the *other*, the *States*."[44]

Mr. Ellsworth said, *inter al*:—

> "We were partly national, partly federal. The proportional representation in the first branch was conformable to the national principle and would secure the large states against the small. An equality of voices was conformable to the federal principle and was necessary to secure the small states against the large. He trusted on this middle ground, a compromise would take place. He did not see that it could, on any other, and if no compromise should take place, our meeting would not only be in vain, but worse than in vain."[45]

A vote on Mr. Ellsworth's motion resulted—Connecticut, New York, New Jersey, Delaware and Maryland, ay, 5; Massachusetts, Pennsylvania, Virginia, North Carolina and South Carolina, no, 5; Georgia, divided, 1.[46] Mr. Sherman said:—

> "We are now at a full stop; and nobody, he supposed, meant that we should break up without doing something. A committee he thought most likely to hit on some expedient."

Mr. Williamson, of North Carolina, said:—

> "If we do not concede on both sides, our business must soon be at an end. He approved of the commitment. On

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[44] Elliott, V., 255. [45] Ibid., 260. [46] Ibid., 270.

the question for committing it 'to a member from each state,' the motion was carried ten to one—Pennsylvania alone voting 'no.' "[47]

This committee brought in a report, July 5, recommending, that the first branch should be organized on the principle adopted in the Committee of the Whole, and that all bills for raising or appropriating money should originate in that branch, and

2. That, in the second branch, each state could have an equal vote.

The debate began all over again, the same arguments being used *pro* and *con* as before.[48] But on July 7, the 2d recommendation was carried, Connecticut, New York, New Jersey, Delaware, Maryland and North Carolina voting aye, 6; Pennsylvania, Virginia, South Carolina, no, 3; Massachusetts and Georgia, divided, 2.[49]

This point having been established, debate began on the basis of apportionment for the first, or popular, branch.

Mr. Patterson, of New Jersey:—

"could regard negro slaves in no other light, but as property. They are no free agents, have no personal liberty, no faculty of acquiring property, but on the contrary are themselves property, and, like other property, entirely at the will of the master. Has a man in Virginia a number of votes, in proportion to the number of his slaves? If negroes are not represented in the states to which they belong, why should they be represented in the general government?"[50]

Mr. Butler and Mr. Pinckney, both from South Carolina, insisted that blacks be included in the rule of representation *equally* with the whites; and for that purpose moved that the words "three-fifths" be struck out.

Mr. Gorham, of Massachusetts:—

"This ratio was fixed by Congress as a rule of taxation. Then it was urged, by the delegates representing the states having slaves, that the blacks were still more inferior to

[47] Elliott, V., 273. [48] Ibid., 274 to 285. [49] Ibid., 286.
[50] Ibid., 289.

freemen. At present, when the ratio of representation is to be established, we are assured that they are equal to freemen."

Mr. Mason, of Virginia:—

"Could not agree to the motion, notwithstanding it was favorable to Virginia, because he thought it unjust. It was certain that the slaves were valuable, as they raised the value of land, increased the exports and imports, and, of course, the revenue; would supply the means of finding and supporting an army; and might, in cases of emergency, become themselves soldiers. As in these important respects they were useful to the community at large, they ought not to be excluded from the estimate of representation. He could not, however, regard them as equal to freemen, and could not vote for them as such."

Mr. Williamson, of North Carolina:—

"reminded Mr. Gorham, that, if the Southern States contended for the inferiority of blacks to whites when taxation was in view, the Eastern States, on the same occasion, contended for their equality. He did not, however, either then or now, concur in either extreme, but approved of the ratio of three-fifths."

Mr. Butler's motion to strike out three-fifths was lost—Delaware, South Carolina and Georgia voting aye, 3; Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, no, 7; New York, not on the floor. [51]

"On the question on the first clause of Mr. Williamson's motion, as to taking a census of the *free* inhabitants, it passed in the affirmative,—Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, aye 6; Delaware, Maryland, South Carolina, Georgia, no, 4.

The next clause, as to three-fifths of the negroes, being considered:—

Mr. KING, [Mass.] being much opposed to fixing numbers as the rule of representation, was particularly so on account of the blacks. He thought the admission of them along with whites at all would excite great discontents among the states having no slaves." [52]

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[51] Elliott, V., 296. [52] Ibid., 300.

"MR. WILSON did not well see on what principle the admission of blacks, in the proportion of three fifths, could be explained. Are they admitted as citizens—then why are they not admitted on an equality with white citizens? Are they admitted as property—then why is not other property admitted into the computation? These were difficulties, however, which he thought must be overruled by the necessity of compromise."

"MR. GOUVERNEUR MORRIS was compelled to declare himself reduced to the dilemma of doing injustice to the Southern States, or to human nature, and he must therefore do it to the former; for he could never agree to give such encouragement to the slave trade as would be given by allowing them a representation for their negroes; and he did not believe those states would ever confederate on terms that would deprive them of that trade."

On the question for agreeing to include three-fifths of the blacks, Connecticut, Virginia, North Caroline, Georgia, aye, 4; Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, no.[53]

On July 12, Gouverneur Morris, of Pennsylvania, moved to add to the clause, empowering the legislature to vary the representation according to the principles of wealth and numbers of inhabitants, a proviso "that taxation shall be in proportion to representation."[54] As he had been consistently opposed to the blacks being enumerated in apportioning representation, and as he was familiar with the opposition of Southern States to their being enumerated as a basis of taxation, it must be inferred that he thought, by coupling taxation with representation, he would induce the Southern delegates to abandon their demand that the slaves, or any portion of them, should be counted in apportioning representation. He must have been surprised at the alacrity with which Butler and Pinckney, both of South Carolina, accepted his amendment.

Mr. Butler contended, again, that representation should be according to the full number of inhabi-

[53] Elliott, V., 301. [54] Ibid., 302.

tants, including all the blacks, admitting the justice of Mr. Gouverneur Morris's motion.

Gen. Pinckney liked the idea. He thought it so just that it could not be objected to; * * * He was alarmed at what was said yesterday, concerning the negroes. He was now alarmed again at what had been thrown out concerning the taxing of exports. * * * He hoped a clause would be inserted in the system, restraining the legislature from taxing exports.

Mr. Morris, still believing that future legislatures might reduce, or do away entirely with, the enumeration of blacks as a basis of taxation and representation, was induced to make his motion still more acceptable by inserting the word "direct" before "taxation" and thereupon his motion passed *nem. con.* as follows: "provided always direct taxation ought to be proportioned to representation." He did not foresee, what actually came to pass, that *direct* taxation was almost never resorted to, by Congress, and that the slave states got the benefit of increased representation based on three-fifths of their slaves, without any corresponding obligation. Direct taxes were "laid on" the respective States by Acts of Congress, dated August 2, 1813, and January 9, 1815, to pay the extraordinary expenses attending and following the War of 1812. Ohio's quota under the first act was $88,527.62, (12 O.L., 3-4); under the second, $175,000 (13 O.L., 304-5) and $200,000 (14 O.L., 185-6).

Some of the delegates from Southern States evidently shared Morris's belief.

Mr. Davie, of North Carolina, who was seldom heard in the Convention, said:—

> "it was high time now to speak out. He said that it was meant by some gentlemen to deprive the Southern States of any share of representation for their blacks. He was sure that North Carolina would never confederate on any terms that did not rate them at least as three-fifths. If the Eastern

States meant, therefore, to exclude them altogether, the business was at an end." [55]

Mr. Randolph was not satisfied with the motion:—

"the ingenuity of the legislature may evade or pervert the rule, so as to perpetuate the power where it shall be lodged in the first instance. * * * He urged strenuously, that express security ought to be provided for including slaves in the ratio of representation. * * * It was perceived that the design was entertained by some of excluding slaves altogether; the legislature therefore ought not to be left at liberty." [56]

Mr. Pinckney moved to amend Mr. Randolph's motion so as to make "blacks equal to the whites in the ratio of representation." Playing on Morris's hopes, he added, "It will also be politic with regard to the Northern States as taxation is to keep pace with representation."

Mr. Pinckney's motion, for rating blacks as equal to whites was lost—only South Carolina and Georgia voting for it. [57]

On the question of the whole proposition, as proportioning representation to direct taxation, and both, to the white and three-fifths of the black inhabitants, and requiring a census within six years and within every ten years thereafter,—

Connecticut, Pennsylvania, Maryland, Virginia, North Carolina and Georgia voted aye, 6; New Jersey and Delaware, no, 2; Massachusetts and South Carolina divided. [58]

The whole subject was opened up again on July 13th (a day to be remembered), by a motion of Mr. Randolph to reconsider. Mr. Butler said:—

"The security the Southern States want is, that their negroes may not be taken from them, which some gentlemen within or without doors have a very good mind to do." [59]

Mr. Madison said:—

"It seemed now to be pretty well understood, that the real difference lay, not between the large and small, but between

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[55] Elliott, V., 302–3.
[56] Ibid., 303–4.
[57] Ibid., 305.
[58] Ibid., 305–6.
[59] Ibid., 309.

the northern and southern states. The institution of slavery, and its consequences, formed the line of discrimination."[60]

July 16, on the question for agreeing to the whole report, as amended, and including the equality of votes in the second branch, it passed in the affirmative.

Connecticut, New Jersey, Delaware, Maryland, North Carolina, aye, 5; Pennsylvania, Virginia, South Carolina, Georgia, no, 4; Massachusetts, divided.[61]

Mr. Randolph thought, in view of the fact that the small states persisted in demanding an equal vote in all cases; that they have succeeded in obtaining it; and that New York, if present, would probably be on the same side.

"that we were unprepared to discuss the subject further. It will probably be in vain to come to any final decision, with a bare majority on either side. For these reasons he wished the Convention to adjourn, that the large states might consider the steps proper to be taken, in the present solemn crisis of the business."

Mr. Patterson thought, with Mr. Randolph, that:—

"it was high time for the Convention to adjourn; that the rule of secrecy ought to be rescinded; and that our constituents should be consulted. No conciliation could be admissible, on the part of the smaller states, on any other ground than that of an equality of votes in the second branch. If Mr. Randolph would reduce to form his motion to adjourn *sine die* he would second it with all his heart."

Mr. Broome, of Delaware-—

"thought it his duty to declare an opinion against an adjournment *sine die*, as had been urged by Mr. Patterson. Such a measure, he thought, would be fatal. Something must be done by the convention, though it should be by a bare majority."

Mr. Rutledge, of South Carolina, could see no need of an adjournment. The little states were fixed. They had repeatedly and solemnly declared

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[60] Elliott, V., 315. [61] Ibid., 316.

themselves to be so. All that the large states, then, had to do was, to decide whether they would yield or not. [62]

July 23d, John Langdon and Nicholas Gillman, from New Hampshire, took their seats. [63] Mr. Gerry, of Massachusetts, moved that the proceedings of the Convention for the establishment of a national government (except the part relating to the executive) be referred to a committee to prepare and report a constitution conformable thereto.

Gen. Pinckney reminded the Convention that if the committee should fail to insert some security to the Southern States against an emancipation of slaves and taxes on exports (cotton, tobacco and sugar) he should be bound by duty to his State to vote against the report.

The appointment by a committee as moved by Mr. Gerry, was agreed to *nem con.* [64]

The next day Mr. Morris said naively:—

> "he hoped the committee would strike out the whole of the clause proportioning direct taxation to representation. He had only meant it as a bridge to assist us over a certain gulf. The object was to lessen the eagerness on one side for, and the opposition on the other to, the share of representation claimed by the Southern States on account of the negroes."

On a ballot for a committee to report a Constitution conformable to the resolutions passed by the Convention, the members chosen were—Mr. Rutledge, of South Carolina, Mr. Randolph, of Virginia, Mr. Gorham, of Massachusetts, Mr. Ellsworth, of Connecticut, and Mr. Wilson, of Pennsylvania. [65]

The committee reported on August 6. The number of representatives at the first formation of the House, from each State, was definitely fixed. The legislature was empowered to regulate the number

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[62] Elliott, V., 317–8.
[63] Ibid., 351.
[64] Ibid., 357.
[65] Ibid., 362–3.

of representatives by the number of inhabitants, according to provisions hereinafter made. The three-fifths rule as to slaves was made the basis of apportionment for direct taxation. It was provided that—

> "No tax or duty shall be laid by the legislature on articles exported from any State; nor on the migration or importation of such persons as the several States shall think proper to admit; nor shall such migration or importation be prohibited."

Which sanctioned the slave trade and made it free of duties or tax of any kind. [66]

Up to this time there had been nothing said about run-a-way slaves, or "fugitives from labor" and the committee's report was silent on that subject.

Mr. Williamson, of North Carolina, moved to strike out "according to the provisions hereinafter made" and to insert the words "according to the rule hereafter to be provided for direct taxation."

Carried by the votes of New Hampshire, Connecticut, Pennsylvania, Maryland, Massachusetts, Virginia, North Carolina, South Carolina and Georgia, 9; New Jersey and Delaware, no, 2.

Mr. King said:—

> "The admission of slaves was a most grating circumstance to his mind and he believed would be so to a great part of the people of America. * * * In two great points, the hands of the legislature were absolutely tied. The importation of slaves could not be prohibited. Exports could not be taxed. Is this reasonable? * * * If slaves are to be imported shall not the exports produced by their labor supply a revenue the better to enable the general government to defend their masters? * * * At all events either slaves should not be represented, or exports should be taxable." [67]

Mr. Sherman, of Connecticut, regarded the slave trade as iniquitous; but the point of representation having been settled, after much difficulty and delibera-

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[66] Elliott, V., 376–7, 379.

[67] Ibid., 391–2.

tion, he did not think himself bound to make opposition.[68]

Mr. Gouverneur Morris moved to insert "free" before the word "inhabitants." Much, he said, would depend on this point.

> "he never would concur in upholding domestic slavery. It was a nefarious institution. It was the curse of heaven on the States where it prevailed. * * * The moment you leave the Eastern States, and enter New York, the effects of the institution become visible. * * * Proceed southwardly and every step you take, through the great regions of slaves, presents a desert increasing with the increasing proportion of these wretched beings. Upon what principle is it that the slaves shall be computed in the representation? Are they men? Then make them citizens, and let them vote. Are they property? Why, then, is no other property included? The houses in this city (Philadelphia) are worth more than all the wretched slaves who cover the rice swamps of South Carolina. * * *
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> "Let it not be said that direct taxation is to be proportioned to representation. It is idle to suppose that the general government can stretch its hand directly into the pockets of the people, scattered over so vast a country. They can only do it through the medium of exports, imports, and excises. For what then are all the sacrifices to be made? He would sooner submit himself to a tax for paying for all the negroes in the United States, than saddle posterity with such a Constitution."[69]

Mr. Morris's eyes were opened at last, but too late. The Convention having come so near to an agreement, would refuse to throw aside their work and begin all over again. His motion to insert "free" before "inhabitants" was defeated 1 to 10, Pennsylvania, itself, voting no.[70]

Messrs. Morris, Madison, Wilson, and Mercer, of Maryland, argued that the legislature should be allowed to tax exports. Messrs. Mason, Williamson, Gerry, that it should not. Mr. Sherman thought that to examine and compare the States in relation to imports and exports, would be opening a boundless

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[68] Elliott, V., 392. [69] Ibid., 392–3. [70] Ibid., 394.

field. He thought the matter had been adjusted and that imports were to be subject, and exports not, to be taxed.[71]

In other words, Mr. Sherman was weary of interminable discussions and anxious to reach a speedy conclusion, and he undoubtedly spoke for a large majority of the delegates. The provision that no tax should be laid on exports was carried by votes of Massachusetts, Connecticut, Maryland, Virginia (Gen. Washington and Mr. Madison, no), North Carolina, South Carolina and Georgia, 7; New Hampshire, New Jersey, Pennsylvania and Delaware, no, 4.

Luther Martin, of Maryland, proposed to vary the report so as to allow a prohibition or tax on the importation of slaves.

> "In the first place, as five slaves are to be counted as three freemen in the apportionment of representatives, such a clause would leave an encouragement to this traffic. In the second place, slaves weakened one part of the Union, which the other parts were bound to protect; the privilege of importing them was therefore unreasonable. And in the third place, it was inconsistent with the principles of the revolution, and dishonorable to the American character, to have such a feature in the Constitution."

Mr. Rutledge, of South Carolina, said, *inter al*:—

> "Religion and humanity had nothing to do with this question. Interest alone is the governing principle with nations. The true question at present is whether the Southern States shall or shall not be parties to the Union."

Mr. Pinckney:—

> "South Carolina can never receive the plan if it prohibits the slave trade. In every proposed extension of the powers of Congress, that State has expressly and watchfully excepted that of meddling with the importation of negroes. If the States be all left at liberty on this subject, South Carolina may perhaps, by degrees, do of herself what is wished, as Virginia and Maryland already have done."[72]

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[71] Elliott, V., 432–3. [72] Ibid., 456–7.

Mr. Sherman, speaking for himself and the majority of delegates, as before, was for leaving the clause as it stands. He disapproved of the slave trade, yet, as the States were now possessed of the right to import slaves * * * and as it was expedient to have as few objections as possible to the proposed scheme of government, he thought it best to leave the matter as we find it. He observed, that the abolition of slavery seemed to be going on in the United States, and that the good sense of the several States would probably by degrees complete it. He urged on the Convention the necessity of despatching its business.

Col. Mason, of Virginia, vigorously denounced slavery and added:—

> "Maryland and Virginia have already prohibited the importation of slaves expressly. North Carolina had done the same in substance. All this would be vain, if South Carolina and Georgia be at liberty to import. * * * Slavery discourages arts and manufactures. The poor despise labor when performed by slaves. They prevent the emigration of whites, who really enrich and strengthen a country. They produce the most pernicious effect on manners. Every master of slaves is born a petty tyrant. They bring the judgment of heaven on a country. As nations cannot be rewarded or punished in the next world, they must be in this. By an inevitable chain of causes and effects, Providence punishes national sins by national calamities."[73]

Mr. Ellsworth, of Connecticut, said, *inter al.*—

> "Let us not intermeddle. As population increases, poor laborers will be so plenty as to render slaves useless. Slavery in time will not be a speck in our country. Provision is already made in Connecticut for abolishing it. And the abolition has already taken place in Massachusetts."[74]

Mr. Pinckney said, *inter al.*—

> "If slavery is wrong, it is justified by the example of all the world. * * * In all ages, one-half of mankind have been slaves. If the Southern States were let alone, they

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[73] Elliott, V., 457–8.

[74] Ibid., 458.

will probably of themselves stop importations. He would himself, as a citizen of South Carolina, vote for it. An attempt to take away the right, as proposed, will produce serious objections to the Constitution, which he wished to see adopted."[75]

Gen. Pinckney said, *inter al.*—

"South Carolina and Georgia cannot do without slaves. As to Virginia she will gain by stopping the importations. Her slaves will rise in value, and she has more than she wants. It would be unjust to require South Carolina and Georgia to confederate on such unequal terms. * * * He admitted it to be reasonable, that slaves should be dutied like other imports; but should consider a rejection of the clause as an exclusion of South Carolina from the Union."

Mr. Wilson observed:—

"if South Carolina and Georgia were themselves disposed to get rid of the importation of slaves in a short time, as had been suggested, they would never refuse to unite because the importation might be prohibited. As the section now stands, all articles imported are to be taxed. Slaves alone are exempt. This is, in fact, a bounty in that article."[76]

Mr. King, of Massachusetts, took the same view.

Mr. Langdon, of New Hampshire, was strenuous for giving the power to the general government.

"He could not with a good conscience, leave it with the States, who could then go on with the traffic, without being restrained by the opinions here given, that they will themselves cease to import slaves."

Mr. Rutledge said:—

"If the convention thinks that North Carolina, South Carolina and Georgia will ever agree to the plan, unless their right to import slaves be untouched, the expectation is vain. The people of those States will never be such fools as to give up so important an interest."[77]

Mr. Sherman said it was better to let the Southern States import slaves than to part with them if

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[75] Elliott, V., 458–9. [76] Ibid., 459. [77] Ibid., 460.

they made that a *sine qua non.* He was opposed to a tax on slaves imported, as making the matter worse, because it implied they were property.

Mr. Randolph was for committing, in order that some middle ground might, if possible, be found.

On the question for committing: Connecticut, New Jersey, Maryland, Virginia, North Carolina, South Carolina and Georgia, aye, 7; New Hampshire, Pennsylvania, and Delaware, no, 3; Massachusetts absent.[78]

August 24, the committee of eleven reported, recommending the following substitute:

> "The migration or importation of such persons as the several States, now existing, shall think proper to admit, shall not be prohibited by the legislature prior to the year 1800; but a tax or duty may be imposed on such migration or importation at a rate not exceeding the average of the duties laid on imports."[79]

Gen. Pinckney moved to strike out 1800 and insert 1808. Mr. Madison opposed the motion but it was carried 7 to 4.

Weariness was becoming more and more apparent.

Gouverneur Morris was for making the clause read at once:

> "The importation of slaves into North Carolina, South Carolina and Georgia shall not be prohibited, etc."

Col. Mason was not against using the term "slaves," but against naming North Carolina, South Carolina and Georgia, lest it should give offence to the people of those States!

Mr. Sherman liked a description better than the terms proposed, which had been declined by the old Congress and were not pleasing to some people.

Mr. Clymer, of Pennsylvania, concurred with Mr. Sherman.

The first part of the report was then agreed to, amended, as it now stands in the Constitution.[80]

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[78] Elliott, V., 461. [79] Ibid., 470–1. [80] Ibid., 477.

After some further debate it was finally agreed *nem. con.* to make the last clause read,—"but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person."[81]

And now, after three months of strenuous debate over almost every line of the Constitution, which was carefully scrutinized before it was admitted in its final shape, on August 29,—

Mr. Butler, of South Carolina, moved to insert after the clause respecting fugitives from justice:—

> "If any person bound to service or labor in any of the United States shall escape into another state, he or she shall not be discharged from such service or labor, in consequence of any regulations subsisting in the State to which they escape, but shall be delivered up to the person justly claiming their service or labor."[82]

And it was agreed to at once—no one objecting!

The springing of this motion just as the goal was in sight, for which all had been striving, and when all were tired out, was a masterpiece of parliamentary strategy. Cotesworth Pinckney, in urging ratification of the Constitution by South Carolina, said:

> "By this settlement we have secured an unlimited importation of negroes for twenty years. The general government can never emancipate them, for no such authority is granted, and it is admitted on all hands that the general government has no powers but what are expressly granted by the constitution. We have obtained a right to recover our slaves in whatever part of America they may take refuge, which is a right we had not before. In short, considering all circumstances, we have made the best terms in our power for the security of this species of property."[83]

South Carolina ratified the Constitution May 23, 1788, but with the significant understanding that Congress "ought never to impose direct taxes, but where the moneys arising from the duties, imports, and excise are insufficient for the public exigencies,

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[81] Elliott, V., 478. [82] Ibid., 492. [83] Ibid., 286.

nor then until Congress shall have made a requisition upon the States to assess, levy, and pay, their respective proportions of such requisitions."[84]

On July 13, 1787, heretofore noted as an important date,[85] the Confederate Congress, then in session at New York, passed "AN ORDINANCE FOR THE GOVERNMENT OF THE TERRITORY NORTHWEST OF THE RIVER OHIO." This Ordinance contained the following important clauses:

> SEC. 14. It is hereby ordained and declared, by the authority aforesaid, that the following articles shall be considered as articles of compact, between the original States and the people and States in the said territory, and forever remain unalterable unless by common consent, towit:—
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> * * * *
>
> ARTICLE II.
>
> The inhabitants of the said territory shall always be entitled to the benefits of the writs of *habeas corpus*, and of the trial by jury.
>
> * * * *
>
> No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land."
>
> * * * *
>
> ARTICLE VI.
>
> There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: "*Provided always*, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid."[86]

Here will be observed the same hostility to the extension of slavery to the territories, or new States to be formed therefrom; the same consideration for vested rights, limited, however, to persons living in the original thirteen States; and the same unwillingness to have slaves or slavery mentioned by name

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[84] Elliott, I., 325.

[85] *Supra*, p. 33.

[86] *Charters and Constitutions*, Vol. I., 431–32.

in a document of historical importance, that we noted in the proceedings of the Constitutional Convention —an entirely different body.

It is probable that the discussions, attending the passage of this Ordinance through Congress, were what caused the expressions of apprehension—real or pretended—made by General Pinckney, Randolph and Butler in the Constitutional Convention on the 12th and 13th of July.[87]

April 30, 1802, Congress passed an act to enable the people of the eastern division of the Northwestern Territory to form a constitution and State government, and for the admission of such State into the Union. The convention, assembled at Chillicothe for this purpose, was composed of thirty-five representatives, only two of whom were from the Western Reserve.[88] The boundaries of the State were fixed by the enabling act. The only other restriction upon the powers of the Convention to adopt such a constitution as might be agreeable to the majority is found in Section 5:—

> "provided the same shall be republican, and not repugnant to the ordinance of the thirteenth of July, one thousand seven hundred and eighty-seven, between the original States and the people and States of the territory northwest of the river Ohio."[89]

This shows that the Seventh Congress of the United States was just as much opposed to the extension of slavery to new States as the Continental Congress which passed the Ordinance for the Northwestern Territory, nearly fifteen years before.

The Constitution, adopted by the Ohio Convention, November 29, 1802, did two things which the Convention which framed the Federal Constitution was unable to do: 1. It apportioned representation

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[87] *Supra*, p. 33.
[88] *Charters and Constitutions*, Vo. II., p. 1453.
[89] *Charters and Constitutions*, Vol II., p. 1454.

among the several counties, on the basis of "white male inhabitants;"[90] 2. It provided that:

> "There shall be neither slavery nor involuntary servitude in this State, otherwise than for the punishment of crimes whereof the party shall have been duly convicted; * * * Nor shall any indenture of any negro or mulatto, hereafter made and executed out of this State, or, if made in the State, where the term of service exceeds one year, be of the least validity, except those given in the case of apprenticeships."[91]

Article VIII of the Constitution further provided:

> SEC. 8. That the right of trial by jury shall be inviolate.
> SEC. 9. That no power suspending the laws shall be exercised, unless by the legislature.
> SEC. 12. That all persons shall be bailable by sufficient sureties, unless for capital offenses, where the proof is evident or the presumption great; and the privilege of the writ of *habeas corpus* shall not be suspended, unless when, in case of rebellion or invasion the public safety may require it."[92]

February 19, 1803, Congress passed an "ACT RECOGNIZING THE STATE OF OHIO" and provided:—

> "That all the laws of the United States which are not locally inapplicable shall have the same force and effect within the said State of Ohio, as elsewhere within the United States."[93]

THE FUGITIVE SLAVE LAW OF 1793.

After the Constitutional Convention had completed its labors, and the delegates of a majority of the States had signed the Constitution and transmitted copies to the Confederate Congress and the Governors of the thirteen States for ratification, things went on pretty much as before, as regards fugitive slaves. If an owner pursued his run-away slave promptly, and caught him before he had gained

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[90] Article I, Sec. 2, of the Constitution. *Charters and Constitutions*, II., 1455.
[91] Article VIII, Sec. 2. Ibid. p. 1461.
[92] Article VIII, Sec. 2. Ibid. p. 1462.
[93] *Charters and Constitutions*, Vol. II., p. 1464.

a settled residence in any northern community, he generally had little or no difficulty in carrying him back. There was, however, in the minds of the people of the free States an unwritten statute of limitation which barred the claim of a dilatory owner; and a slave who had settled and proved himself a useful and law abiding resident of such a community could not, as a rule, be retaken without considerable opposition.

So, on February 12, 1793, Congress passed "*An act respecting fugitives from justice, and persons escaping from the service of their masters,*" [94] which remained in force, without alteration or amendment, for more than fifty-seven years. It was, by resolutions of the Ohio Legislature, printed, with the Constitution and other laws of that State, in volumes 3, 8, 17, 18 and 29, so as to advise all citizens of Ohio that that particular statute was part of the law of the land.

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[94] Public Statutes at Large of the United States, published by Little & Brown, Boston, 1845, Vol. I, 302 to 305 incl. Sections 3 and 4 read as follows:

Sec. 3. *And be it also enacted*, That, when a person held to labour in any of the United States, or in either of the territories on the northwest or south of the river Ohio, under the laws thereof, shall escape into any other of the said States or territory, the person to whom such labour or service may be due, his agent or attorney is hereby empowered to seize or arrest such fugitive from labour, and to take him or her before any judge of the circuit or district courts of the United States residing, or being within the State, or before any magistrate of a county, city or town corporate, wherein such seizure or arrest shall be made, and upon proof to the satisfaction of such judge or magistrate, either by oral testimony or affidavit taken before and certified by a magistrate of any such state or territory, that the person so seized or arrested, doth, under the laws of the state or territory from which he or she fled, owe service or labour to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labour to the state or territory from which he or she fled.

Sec. 4. *And be it further enacted*, That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney, in so seizing or arresting such fugitive from labour, or shall rescue such fugitive from such claimant, his agent or attorney, when so arrested pursuant to the authority herein given or declared; or shall harbor or conceal such person *after notice* that he or she was a fugitive from labour, as aforesaid, shall, for either of the said offences, forfeit and pay the sum of five hundred dollars. Which penalty may be recovered by and for the benefit of such claimant, by action of debt, in any court proper to try the same: saving moreover to the person claiming such labour or service, his right of action for or on account of the said injuries or either of them.

APPROVED: February 12, 1793.

For the first thirty years, there was little litigation over escaped slaves, or the cases were considered as too trivial to report. Pennsylvania, being almost surrounded by States where negroes were still held in bondage,—New York, New Jersey, Delaware, Maryland, and the "Pan handle" of Virginia—had the most troublesome experience of any, down to 1840. The disposition of the Courts, at first, was to construe the statute strictly; and persons accused of obstructing claimants often escaped conviction, or punishment, on some technicality. A bad statute may remain on the books a long time if no general attempt is made to enforce it.

There were objections to this law, both on the part of slave-owners and those who sympathized with the blacks. The former thought it was drawn too loosely and could be violated in many ways with impunity; the latter, that it was drawn so as to give a man, claiming ownership, summary possession of the alleged fugitive upon making, or producing an *ex parte* affidavit, and without any fair judicial test as to the status of the negro claimed. Where two different persons laid claim to the same piece of property the Constitution and laws provided for a trial by jury. The question of ownership could be raised in a suit against a person obstructing or hindering a claimant in retaking his slave, and the defendant in such a suit was entitled to a jury trial. But if there was but one claimant for a negro, the latter, being considered nothing but property, was given no chance to set up and prove a claim to himself and no right to a jury trial.

Three cases decided in 1822, 1823 and 1824, by Bushrod Washington, a Justice of the United States Supreme Court and a nephew of George Washington, show a disposition to construe the law strictly. In the first,[95] a suit by a claimant, who had seized a

[95] Hill v. Low, 4 Wash., 327.

negro and was taking him before a magistrate, against a person who objected to the proceeding and by his talk and actions caused an assemblage of people forcing the claimant to go out of his course and thus give the negro an opportunity to escape;—Judge Washington held; (1) that the claimant must prove to the satisfaction of the jury that he was the owner of the negro in question, or that he was the agent of the real owner, or he could not recover; and (2) that it was not a violation of the statute to hinder or obstruct the owner or agent in taking the alleged fugitive before a magistrate *after* the arrest, unless the negro escaped. A judgment in favor of the claimant for $500 damages was reversed.

In the second[96] he denied the application for a certificate of ownership to a resident of Charleston, South Carolina, who had brought a slave with him to Philadelphia, kept him there as a servant for over ten months and then left him there when he returned to Charleston. He held the slave was not a *fugitive* from one State to another within the meaning of the act, and the owner could not reclaim him as such. The laws of Pennsylvania alone applied to the case, and under those laws the alleged fugitive was free.

In the third case[97] the claimant of an alleged fugitive slave, Tom, after seizing him, taking him before a magistrate and securing a certificate authorizing him to remove Tom to Maryland, delivered him to a jailer at Doylestown, Pa., for safe keeping. The jailer took him into the jail yard surrounded by a wall nineteen feet high and locked him in there with other prisoners, while he went into the house to get supper. Tom's fears must have lent him wings, for he got over that nineteen foot wall and escaped. The claimant sued the jailer for damages for allowing the escape, and the case was tried to a

[96] Ex parte Simmons, 4 Wash., 396.

[97] Worthington v. Preston, 4 Wash., 461.

jury. Judge Washington charged the jury that the authority of the magistrate was limited to examining into the claim of the alleged owner and to granting him a certificate of ownership if satisfied as to the fact. The certificate was not a warrant for committing the fugitive to jail and the jailer was under no legal obligation to receive him, by virtue of such certificate.

The jailer was not liable as a bailee unless guilty of gross negligence. There was a verdict for the defendant. The judge said *inter al*;—

> "An attempt has been made in congress to correct these glaring defects in the act, without which correction the act is found to be practically of little avail; but the attempt has not as yet succeeded. As it now stands, the magistrate had no authority to command the gaoler in this case to receive and safe keep the fugitive."

But, as cotton, rice, tobacco, and sugar crops became more profitable, the slaves, by whose labor they were raised, became more valuable. While a slave, worth $200 or $300 at most, might not be pursued very energetically, one worth $1,000 or $1,200 was much more liable to seizure by the owner, or by any one tempted by the prospect of a reward.

The rise in price of negroes was largely due to the suppression of the African slave trade, and the consequent demand for native-born negroes, which could only be met by the border states. The sale "down South" of negroes raised in Maryland, Virginia or Kentucky, proved a very convenient way of securing a little ready cash. The very thought of being sent to the rice swamps of South Carolina, the canebrakes of Louisiana, or the cotton fields of the Gulf States, filled the negroes with terror and the number of fugitives increased. Their prospective sufferings, if caught, appealed to the sympathies of humane men in the north, and there was a growing disposition to aid their escape. The resentment of slave catchers, cheated of their prey, led to more

frequent prosecutions of those who in any way interfered with the chase. The courts became less rigorous in their construction of the law and more inclined to favor the claimant. Conviction became more certain and penalties more severe. This, however, only increased the hatred of slavery among the masses in every free community, and we read in the charges of judges to juries, impaneled to try such cases, apologies for the law which the Courts must nevertheless enforce, and admonitions to suppress feelings and conscientious scruples which the judges confessed were quite natural and right.

Chief Justice Tilghman, of the Supreme Court of Pennsylvania, said to be one of the most humane of men, told the jury in *Wright* v. *Deacon*, 5 Serg. & Rawle, 63,

> "Whatever may be our private opinions on the subject of slavery, it is well known that our Southern brethren would not have consented to have become parties to a constitution under which the United States have enjoyed so much prosperity, unless their property in slaves had been secured."

Mr. Justice Baldwin, of the United States Supreme Court, in the case of *Johnson* v. *Tompkins et al*, 1 Baldwin, 571, tried in the Circuit Court, said to the jury:—

> "It is not permitted to you or us to indulge our feelings of abstract right on these subjects; the law of the land recognizes the right of one man to hold another in bondage, and that right must be protected from violation, although its existence is abhorrent to all our ideas of natural right and justice.
>
> "As a consequence of this right of property, the owner may keep possession of his slave; if he absconds, he may retake him by pursuit into another State; * * * he may arrest him by the use of as much force as is necessary to effect his reclamation; * * * taking care to commit no breach of the peace against third persons. But it is no breach of the peace to use as much force or coercion towards the fugitive as sufficies for his security, as without such force no slave could be retaken, without his consent.
>
> If this is unjust and oppressive, the sin is on the heads of the makers of laws which tolerate slavery, or in those who have the power, in not repealing them."

The jury in this case brought in a verdict for $4,000 damages against persons who had obstructed the reclamation of Jack, who ran away from his owner's place near Princeton, N. J., and crossed the Delaware into Pennsylvania, and the Judge entered a judgment on the verdict, although the owner had succeeded, after some difficulty, in carrying off his slave.

Mr. Justice McLean, in overruling a motion for a directed verdict for defendant at the close of plaintiff's testimony in *Jones* v. *Van Zandt*, 2 McLean, 596, said:—

> "The counsel for the defendant admit that, in a given case, the plaintiff has a remedy under the act of Congress. If this be so what have we to do with slavery in the abstract? It is admitted by all who have examined the subject, to be founded in wrong, in oppression, in power against right. But in this case we have only to inquire whether the acts of the defendant, as proved under the law of Congress, subject him to a claim for indemnity by the plaintiff."

The case was then argued and submitted to the jury who brought in a verdict for the plaintiff and assessed his damages, for the escape of one slave, at $1,200.

On a motion for a new trial the Judge gave an elaborate opinion overruling the motion. Among other things, he said:—

> "I was not prepared to hear, in a Court of Justice, the broad ground assumed as was assumed in this case before the jury, that a man, in the exercise of what he conceives to be a conscientious duty, may violate the laws of the land. That no human laws can justly restrain the acts of men, who are impelled by a sense of duty to God and their fellow creature. We are not here to deal with abstractions. We cannot theorize upon the principles of our government, or of slavery. The law is our only guide. * * * If the law be wrong in principle or oppressive in its exactions, it should be changed in a constitutional mode." (Ib. p. 616.)

In *Morris* v. *Newton et al.*, 5 McLean, 92, known as the "South Bend Rescue Case," four negroes who

had been living near Cassopolis, Michigan, for nearly two years, were captured Sept. 27, 1849, by the claimant and a party he had organized for that purpose, who placed them in a wagon and started south with them, without taking them before any judge or magistrate or securing a certificate of ownership. Passing through South Bend, Indiana, they halted a mile or two from the village for refreshments and were overtaken by the sheriff of the county who had a writ of *habeas corpus* to serve on the claimant. A crowd soon gathered numbering more than one hundred and forty, and the claimant returned with the negroes to South Bend. The judge, before whom the negroes were brought, discharged them, on the ground that the claimant had no right to take them out of the State where the arrest was made, but should have taken them before some judicial officer of that State or of the United States. Immediately after their discharge the claimant arrested them again under a writ issued under a State law of Indiana. The crowd had by this time become highly excited and to prevent a collision it was agreed that the negroes should be placed in jail for safe keeping. The next day (Saturday) the streets were crowded with people, the greater part of whom were colored. Some had firearms and almost all had clubs. Many of them came from Cass county, Michigan.

On Monday another writ of *habeas corpus* was allowed by the judge, and the plaintiff under the circumstances declined any further attempt to take the fugitives but said that his rights had been violated and he should claim compensation from those who had injured him. The fugitives were discharged by the judge and went off surrounded by a great number of colored persons. Suit was brought in the United States Court against a number of citizens, including the judge who discharged the fugitives. On the trial of the case, Justice McLean charged the jury *inter al.*,—

"The legal custody of the fugitives by the master being admitted as stated in the return on the habeas corpus, every step taken subsequently was against law and in violation of his rights. I deem it unnecessary to inquire into the procedure subsequently. It was wholly without authority. The forms of law assumed afford no protection to any one. The slaves were taken from the legal custody of their master, and he thereby lost their services." (Ibid. p. 101.)

"Every person of the large crowd in the court-house, or out of it, who aided, by words or actions, the movement which resulted in the escape of the fugitives, is responsible. On such an occasion, liability is not incurred where no other solicitude is shown by words or actions, than to obtain an impartial trial for the fugitives." (Ibid. p. 102.)

"In these matters, *the law, and not conscience,* constitutes the rule of action. You are sworn to decide this case according to the law and testimony. And you become unfaithful to the solemn injunctions you have taken upon yourselves, when you yield to an influence which you call conscience, that places you above the law and the testimony. Such a rule can apply only to individuals; and, when assumed as a basis of action on the rights of others, it is utterly destructive of all law. What may be deemed a conscientious act by one individual, may be held criminal by another. In the view of one, the act is meritorious; in the view of the other, it should be punished as a crime. And each has the same right, acting under the dictates of his conscience, to carry out his own view. This would overturn the basis of society." (Ib. pp. 104-5.)

"It is expected that the citizens of the free States should be opposed to slavery. But with the abstract principles of slavery we have nothing to do. As a political question there could be no difference of opinion among us on the subject. But our duty is found in the Constitution of the Union, as construed by the Supreme Court. The fugitives from labor we are bound, by the highest obligations, to deliver up on claim of the master being made; and there is no state power which can release the slave from the legal custody of his master." (Ibid. p. 105.)

"If the law be unwise or impolitic, let it be changed in the mode prescribed; but, so long as it remains the law, every good citizen will conform to it. And every one who arrays himself against it, and endeavors by open or secret means to bring it into contempt, so that it may be violated with impunity, is an enemy to the interests of his country.

"The jury returned a verdict for the plaintiff, for $2,850 in damages." (Ibid. p. 106.)

OHIO FROM 1802 to 1851.

THE BLACK LAWS—THE THREE-FIFTHS RULE—FUGITIVE SLAVE, AND ANTI-KIDNAPPING LAWS.

During the first half of the nineteenth century, Ohio may well have been termed the "melting pot of the colonies." In no other State of the Union was the immigration from the original thirteen States so evenly distributed. To the Connecticut Western Reserve came settlers from all New England, New York, and northern Pennsylvania. To the east-central portion, comprising the counties of Columbiana, Stark, Wayne, Jefferson, Belmont, Carroll, and Tuscarawas, came settlers from middle and western Pennsylvania, including Moravians and "Pennsylvania Dutch." To Marietta and the Muskingum Valley came settlers from Massachusetts. All the rest of Southern Ohio was dominated by settlers from States in which slavery still existed when Ohio became a State—New Jersey, Delaware, Maryland, Virginia, North Carolina, Kentucky and Tennessee.[98]

For a quarter of a century, the only political party in Ohio which had a State organization and any considerable following was the Democratic party, and its policy was shaped by men from these slave States. They showed no disposition, at any time, to ignore, or evade, the anti-slavery clauses of the Ordinance for the Northwestern Territory and the Constitution of Ohio. Indeed, the motive which actuated many of them in coming to Ohio, was the prospect of escaping from the evils of slavery and the degrading influences of a servile community.

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[98] In taking the census of 1850, the first attempt was made to ascertain the nativity of the citizens of the respective States. This showed that 529,208 whites and 12,662 blacks, then residing in Ohio, were born in other states. New England contributed 66,032; New York, 83,979; New Jersey, 23,532; Pennsylvania, 200,634 Virginia, 85,762; Maryland, 36,698; Kentucky, 13,829; and all other States, 31,404. As many of the early settlers had died and many had passed on to other States in the West or Southwest, this is but an imperfect showing of the commingling of the people in the first State of the Central West.

They brought with them, however, their natural antipathy to the black race; their inability to recognize as man any person covered with a colored skin; their consequent unwillingness to grant him the rights of citizenship; and their settled conviction that, with few exceptions, negroes were only fit for slaves, and should be used as such wherever their labor was profitable and masters could be found willing to take the trouble of supporting them and forcing them to work. They soon made it apparent that negroes, bond or free, were not wanted in Ohio.

January 5, 1804, the Legislature passed "AN ACT TO REGULATE BLACK AND MULATTO PERSONS,"[99] by the terms of which, no such person was permitted to settle, or reside in the State, unless he should first produce a certificate from some Court within the United States of his actual freedom, and residents were prohibited from employing any black or mulatto person unless he had such certificare "under pain of forfeiting and paying any sum not less than ten nor more than fifty dollars * * * for every such offence, one half thereof for the use of the informer." Any person harbouring or secreting any black or mulatto person, the property of any person whatever, or in any wise hindering or obstructing the owner in retaking his black or mulatto servant or servants was liable to the same penalty. Any person claiming that any black or mulato person was his property, on making satisfactory proof of ownership, before any associate justice, or justice of the peace within the State, was entitled to a warrant directing the sheriff or constable to arrest such black or mulatto person and deliver him to the claimant. To prevent kidnapping, any person who should attempt to remove any black or mulatto person from this State without proving property was liable, on conviction, to forfeit and pay $1,000, one half to

[99] Ohio Laws, II, 63 to 66 incl.; reprinted in O. L., VIII, 489 to 492 incl.

the use of the informer and the other half to the use of the State and moreover should be liable to the action of the party injured.

This act was followed by another, January 25, 1807[100] reenacted and reprinted in 1811, and again in 1816, 1824 and 1831, making the additional requirement that no negro or mulatto should be permitted to emigrate into and settle within this State unless he should

> "within twenty days thereafter enter into bond with two or more sureties, in the penal sum of $500 * * * conditioned for the good behavior of such negro or mulatto, and moreover to pay for the support of such person in case he, she, or they should thereafter be found within any township in this State, unable to support themselves."

Any person employing, harboring, or concealing any such negro contrary to the provisions of this act shall forfeit and pay not exceeding $100—one half to the informer and the other half for the use of the poor of the township in which such person may reside. This act further provided:—

> "SEC. 4. * * * That no black or mulatto person or persons shall hereafter be permitted to be sworn or give evidence in any court of record, or elsewhere, in this State, in any cause depending, or matter of controversy, where either party to the same is a white person, or in any prosecution which shall be instituted in behalf of this State against any white person."

These laws were not repealed until February 10, 1849[101] when Townshend, of Lorain, and Morse, of Painesville, at the head of thirteen Free Soilers from the Western Reserve, held the balance of power in the House of Representatives. The Democrats and Whigs, elected to this General Assembly, were so nearly equal in numbers that neither could command a quorum without the Free Soilers. The latter, con-

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[100] O. L. V., 53-4; O. L., IX, 109-111 incl.; O. L., XXII, 334-5; O. L., XXIX, 44o-1.

[101] O. L., XLVII, 17-18.

scious of their power and determined to use it to advance the cause they had at heart, refused to join with either until certain demands were complied with. Townshend dickered with the Democrats, and Morse, with the Whigs. Both demanded the repeal of the "Black Laws," and some suitable provision for the education of the colored children. Townshend demanded of the Democrats the election of Salmon P. Chase as United States Senator, and Morse demanded the election of Joshua R. Giddings. The first party to yield to these demands would receive the support of the Free Soilers. Amid storms of obloquy and the passionate outcries of their fellow members and the Press throughout the State, they held to their purpose for weeks. It was, perhaps, the most exciting session the Ohio Legislature ever held. At last the Democrats, many of whom were so-called Free Democrats, opposed to the further extension of slavery, came to terms, and the House was organized by the election of a Democratic Speaker and other officers. Salmon P. Chase was sent to the United States Senate and the Black Laws were repealed.[102] It is a commentary on the courage of the Democratic politicians that this repeal is hidden away in the 6th section of an Act "To authorize the establishment of separate schools for the education of colored children," and nothing in the table of acts passed, or the "Index" to the volume of statues would give one an inkling that such a repeal had been effected.

This same section reveals the existence of another Black Law, passed February 9, 1831,[103] which was not repealed. It appears as a "joker" in Section 2 of "AN ACT relating to Juries." By this section, clerks of the courts of common pleas in their respective counties are required "on the first Monday of September next, and on the first Monday of Septem-

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[102] Warden, *Life of Salmon P. Chase*, pp 320, 321, 322.

[103] O. L., XXIX, 94.

ber annually thereafter [to] cause the proportion of jurors to be ascertained from *the number of white male inhabitants* of the age of twenty-one," etc. The further duties of the clerks are prescribed in minute detail. Black and mulatto persons are nowhere mentioned in the act; but the act is so drawn that none but *white* persons could be placed in the jury box.

But the blacks were handicapped in many other ways. While their property was liable to taxation for all public purposes they had no voice in determining how public funds should be expended. The Constitution and laws limited the franchise to "white male inhabitants above twenty-one years of age."[104] They were not allowed to gain a "legal settlement" in any townships of the State so as to receive any benefit from the poor laws.[105] No relaxation of this rule was permitted until March 14, 1853,[106] when Sec. 2 of "AN ACT For the relief of the poor," declared—

> "That nothing in this act shall be so construed as to enable any black or mulatto person to gain a legal settlement in this State. Provided that nothing in this section shall be so construed as to prevent the directors of any county or city infirmary in their discretion from admitting any black or mulatto person into said infirmary."

The Legislature passed many laws for the organization and maintenance of common schools, but the benefits of such schools were expressly limited to *white* unmarried persons between the ages of five and twenty-one.[107] The children of black and mulatto persons would seem to be excluded by necessary inference from attending public schools; but, that there might be no room for doubt or evasion, the

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[104] *Charters & Constitutions*, II, 1455; Ohio Laws, I, 72; V, 55; XXV, 16; XXIX, 428; XXX, 5; XXXIII, 356; XLII, 3; XLIX, 109.

[105] O. L., V, 53; IX, 109; XXVII, 54; XXIX, 320.

[106] O. L., LI, 469.

[107] O. L., XXIII, ; XXVII, 33, 35; Ibid., 72; XXIX, 414; XXXII, 25; XXXIV, 19, 31; XXXVI, 21.

Legislature in an act passed in February, 1829,[108] "for the support and better regulation of Common Schoools" used this language:—

> "*Provided*; That nothing in this act contained shall be so construed as to *permit* black or mulatto persons to attend the schools hereby established," etc.

A show of fairness was made in these acts by provisions excepting the property of black or mulatto persons from taxation for school purposes, and appropriating taxes assessed on their property for the education of black or mulatto persons, but it was a hollow mockery. All other children could gain an education at public expense, no matter how indigent their parents might be. Colored children could gain no education unless their parents, who had almost no opportunity to engage in lucrative pursuits, should establish and maintain private schools, at their own expense. The blacks and mulattoes did not demand separate schools, or special instruction for their children; and the segregation of black and white children was not made in their interest. Their children could have been taught in any school and by any teacher competent to teach white children, without any additional expense to the public. If the segregation was demanded by the whites and was, as claimed, in the interest of the general public, it would seem to be only fair that the general public should bear the expense.

The unfairness of saddling the cost of instruction in separate schools upon the blacks was made still more apparent by the passage of various laws providing for the teaching of German, at the request of German parents, in common, or separate, schools established and maintained at public expense, and by teachers who must have qualifications other than those required for teaching in English schools.

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[108] O. L., XXVII, 72.

The act of March 7, 1838 (O. L., XXXVI, 21 to 37, incl.) provided:—

> "SEC. 9. * * * That nothing in this act shall be so construed as to prevent any other language in addition to the English from being taught in the common schools, at the discretion of the directors."

The act of March 16, 1839, (O. L. XXXVII, 61 to 67, incl.) limited the privileges of common schools to white children but provided:—

> "SEC. 6. That the directors shall have power to determine what branches and language, or languages, shall be taught in their several districts: Provided, That branches taught shall be such as are generally taught in common schools.
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> * * * *
>
> SEC. 18. That in any district where the directos keep an English school, and do not have branches taught in German it shall be lawful for youths in such districts who desire to learn in the German language, to attend at a district German school * * * and the same rule shall be adopted and privileges allowed in favor of those wishing to learn the English who reside in districts where the German language is taught, and so of any other language.
>
> * * * *
>
> SEC. 20. That it shall be the duty of the county assessors when taking a list of taxable property of the county, when he takes in the property of a black or mulatto person, to note the fact opposite to his or her name in the abstracts he makes out for the county auditor."[108a]

But what was to be done about such "tainted property" was not made clear in the act; although the Act of March 7, 1838, (O. L., XXXVI, 21), provided that;

> "If any tax for school purposes shall be levied on the property of any black or mulatto person it shall be the duty of the county treasurer or other person charged with the collection of the same to *abate* said tax."

[108a] The extent to which German schools and the study of German in English common schools was fostered by the Ohio legislature—all at public expense—may be appreciated by a study of the following acts:—Ohio Laws, XL, 52; XLV, 26-7; XLVII, 22-26; LI, 506; and LVIII, 90-1.

Common school education seems to have been a fascinating subject for Ohio legislators, for acts were passed nearly every year for revising, amending, or repealing former acts regulating the schools, or making entirely new provisions. Sometimes the acts authorizing levies of taxes for school purposes, excepted property owned by blacks and mulattoes, and sometimes they did not. It was too much trouble for the average county official to ascertain just what real estate and other property belonged to blacks and what did not, and just what law applied. It was inconvenient to use two different rates in figuring out the taxes which the respective classes—black and white—should pay; and so, in practice, the blacks generally paid their full proportion of the school taxes and derived no benefit whatever from the schools. This abuse of the color line became so notorious that the Whig legislature of 1838 adopted a "RESOLUTION, Relating to School Taxes, improperly paid by black and mulatto persons"[109] as follows:—

> "Whereas. by an act of the General Assembly of the State of Ohio, passed March 10th, 1831, entitled 'An act to provide for the support and better regulation of Common Schools,' the property of black and mulatto persons was exempted from taxation for school purposes, and by the same act, the children of such persons were prohibited from a participation in the school fund raised under the provisions of this act, and consequently denied the privileges and benefits arising from our common school system: And, whereas, it is represented to this General Assembly, that, in many of the counties in this State, taxes have been collected for school purposes, of such black and mulatto persons, since the passage of the above mentioned act, contrary to its true meaning and intent, as well as justice and equity: Therefore, *Resolved* * * *, That the auditors of the several counties in this State, be required to examine the tax duplicates of their respective counties, each year since the passage of the above mentioned act, and ascertain the amount of tax thus collected from black and mulatto persons each year, for school purposes, and cast the interest on the same annually, and

[109] O. L., XXXVI, 412-13.

report the amount of such tax and interest, thus collected of such persons, and report the same to the Auditor of State on or before the first day of December next.

"*And be it further resolved*, That the Auditor of State be required to report the same to the next General Assembly, within thirty days from the commencement of its session, to the end that the Legislature may have such action thereon as to it may appear just and right.

March 13, 1838."

There was a see-saw in politics about this time, and the legislative power passed from the Democratic to the Whig party, and vice versa, with almost every election. The legislature of 1839 was Democratic and nothing came of this feeble attempt to do justice.

While there might be some show of reason in the law limiting the privileges of the common schools to the children of those who paid the taxes, if the rule was consistently applied and all those whose parents did not pay taxes were excluded, there was no basis, except racial prejudice, for distributing annually some two hundred thousand dollars arising from the proceeds of sales of "swamp lands" granted to the State, by Act of Congress, for purposes of education, among the several counties according to the number of *white* youth resident in each county, as provided by Section 3, of the act of March 7, 1838[110] and for making the schools supported by such public moneys free only to white children, as provided by Section 9, of the same act.[111] Such funds were not raised, and such support to the schools was not provided by white tax payers, and the rule for limiting benefits received to those who contributed to the fund could not apply.

A small band of so-called "theorists," mostly from the Western Reserve in several successive Legislatures, pressed home upon the minds and consciences of their fellow members the want of logic, of justice, of humanity, and of intelligent regard for the interest

[110] O. L., XXXVI, 21; XLIX, 40. [111] Ibid., 25.

of the general public, involved in the exclusion of colored children from the common schools and the absence of any provision for educating such children. At last the Legislature of 1848 was moved to pass "AN ACT for the establishment of Common Schools for the children of black and mulatto persons," [112] etc. This provided:—

> SEC. 1. * * * That all such property belonging to black or colored persons, as is liable to taxation when owned by white persons, and the taxes thereon assessed be collected in the same manner as similar taxes are by the acts to which this is an amendment, a separate account of which shall be kept by the several county officals, and shall be paid out for the support of schools for black or colored persons in any district in which such schools may be organized; but in any such district in which the children of black or colored persons are permitted to attend the common schools with the children of white persons, then such fund shall be added to the common school fund of the district from which it is collected, and paid over to the treasurer of said district on the order of the directors of said district.
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> SEC. 2. That every city, incorporated town, or village, seat of justice or organized township in this State, containing twenty or more black or colored children, of any age, and desirous of attending school, shall constitute a school district for such children; and it shall be lawful for colored persons residing in such school district as aforesaid, to assemble and organize said district, appoint school directors of their own number, to erect and repair a suitable school house of their own, to procure suitable teachers, and in all respects for such purposes only, to possess the same powers, and enjoy the same benefits that are possessed and enjoyed by white persons, by virtue of the acts to which this is an amendment.
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> * * * *
>
> SEC. 5. That in every city" [etc.] "containing a less number than twenty black or colored children, desirous of attending school it shall be the duty of the school directors of any school district organized for the education of white children, to admit said black or colored children upon the same terms, and they shall be entitled to the same benefits as they would be if they were white * * * *Provided no written objection be filed with the directors signed by any person*

[112] Ibid. XLVI, 81 to 83 incl.

having a child in such school, or by any legal voter of such district. [113]

SEC. 6. * * * [Where] "the white inhabitants will not permit them to attend said schools, and in all other respects be entitled to the same privileges, and governed in the same manner as they would be if they were white, under the acts to which this is an amendment, in all such districts, no black or colored person's property shall be taxed for school purposes.

* * * *

SEC. 9. That nothing in this act shall be so construed as to tax the property of white persons for the purpose of building school houses for black or colored children, or purchasing sites for such houses, or for tuition purposes contrary to the wishes of such tax-payers.

SEC. 10. * * * in no case shall the property of black or colored persons be taxed for the support of schools organized to educate white youth, except as herein provided."

A curious specimen of local option law, which put it in the power of *one person* in each school district, whether he had children of his own or not, to prohibit the education of colored children in that district, though all other persons in such district should agree that they ought to have it!

The next Legislature—the one that repealed the "Black Laws" and sent Salmon P. Chase to the United States Senate—embodied such repeal in a new "Act, To authorize the establishment of separate schools for the education of colored children and for other purposes." [114]

By the terms of this act the school authorities of each incorporated township, city, etc., were:—

> "authorized and required respectively, in case they shall not deem it expedient to admit the colored children resident in any such township, city, town or village, into the regular common schools therein established, to create one or more school districts, for colored persons in every such township, city, town or village"—

and to call a meeting of the colored tax payers of said district for the purpose of electing school directors

[113] Not italicized in the original.

[114] O. L., XLVII, 17-18.

for such district who should exercise the same powers in such district as were exercised by white directors in other school districts. Such districts were—

> "held to include for school purposes only the colored persons resident within its territorial limits and from and after the establishment of the same, the colored youth resident therein shall attend the schools organized under the directors of such district."

The option of admitting colored children to the common schools, or excluding them, was, by this act, transferred from the solitary and possibly childless voter of a district, to the school authorities, who may be fairly presumed to represent the majority of the voters in such district; but in other respects it was hardly an improvement on the colored school law of 1848. Section 3, of the Act provided:—

> "no property of any colored tax payers within said districts shall be charged with any special tax for district purposes, for the benefit of the schools in any regular district, composed wholly or in part of the same territory; and no property of any white person in any regular district shall be charged any such tax for the benefit of the schools in any separate district composed wholly, or in part, of the same territory."

In other words, the colored children could still enjoy only such schools as could be erected and maintained by levy of a school tax on the property of black and mulatto residents of the district in which they lived. Under this act, however, the colored children were generally permitted to attend the common schools on the Western Reserve and in many other portions of the State.

Racial antipathy to the blacks was shown in many other public acts and resolutions. For instance, on January 29, 1818, the Legislature adopted a resolution (O. L. XVI, 198-9), reciting that,—

> "WHEREAS a number of the good people of this State have by memorial expressed their most ardent wishes for the emancipation and colonization of the people of colour of the United States: Therefore

Resolved * * * That our Senators in Congress be instructed, and our representatives be requested, to use their best endeavors to procure the passage of a law which will effect the purpose aforesaid."

On January 24, 1828, the Legislature (O. L., XXVI, 177),—

"*Resolved* * * * That our Senators in Congress be instructed, and our representatives be requested, to use their efforts to induce the government of the United States to aid the 'American Colonization Society' in effecting the object of their institution which is so eminently calculated to advance the honor and interest of our common country."

On March 23, 1849, the Legislature adopted the following "JOINT RESOLUTION, relative to the oppressed people of color in the United States (O. L. XLVII, 395-6),—

"WHEREAS, the people of color of the United States have been oppressed and enslaved, by the several States, and thereby degraded, and believing it to be the duty of the general government to do something for their elevation to that position nature's God designed for all men, therefore,

Be it resolved * * * That our Senators be instructed, and our Representatives in Congress be requested to inquire into the expediency of procuring the passage of a law, authorizing the survey and appropriation of a portion of the territory acquired from Mexico, for the benefit of all free persons of color who may become actual settlers of the same, and a title of eighty acres of land delivered to each of said persons, free of charge, and also to establish schools, and provide for them a government for protection."

On February 5, 1850, the Legislature passed a "RESOLUTION, Instructing our Senators and Representatives in Congress in relation to the independence of Liberia, and for other purposes." (O. L., XLVIII, 714),—

* * * to use their best influence to induce the general government to acknowledge the independence of the republic of Liberia; that they also be requested *to use all honorable means to induce the free blacks of the United States to emigrate to that country.*"[115]

[115] The italics are mine.

On March 23, 1850, the Legislature adopted the following JOINT RESOLUTION Relative to Colonization." (O. L. XLVIII, 713),—

> "WHEREAS, the settlement of the African coast with colonies of civilized colored men, is the cheapest and best plan of suppressing the African slave trade, being likewise calculated to further the work of colonizing our people of color, as well as civilizing and christianizing the African race, which plan of suppressing the slave trade is true American policy: Therefore,
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> *Be it resolved*, That our Senators and Representatives in Congress be, and they are hereby requested, in the name of the State of Ohio, to call for a change of National Policy on the subject of the 'African Slave Trade,' and that they require a settlement of the coast of Africa, with colored men from the United States and procure such changes in our treaty relations with other nations as will enable us to transport colored men from this country to Africa with whom to effect such a settlement."

Such resolutions cannot be attributed to personal hostility to the blacks or a desire to do them harm. They were entirely consistent with a determination to suppress the slave trade, and strong opposition to the extension of slavery, and a disposition to secure its abolition whenever that could be effected by moral suasion, or constitutional laws; but they indicated clearly that the majority of the people of Ohio hoped and desired that the blacks should not continue to dwell among them.

When North Carolina first proposed an amendment to the Constitution of the United States empowering Congress to pass a law to prevent further importation of slaves or people of colour into the United States,[116] the Ohio Legislature resolved, February 22, 1805, (O. L. III., 471-2) that,—

> "as that period will shortly arrive, when Congress will possess the power to act as they may think proper on this subject; and notwithstanding that this inhuman practice is impolitic in the extreme, and altogether repugnant to the principles

[116] North Carolina Laws.

> on which our government is founded, yet, as it was a mutual agreement between the states forming the federal compact, that Congress should not possess the power of preventing any of the states, then existing, from carrying on a traffic of this kind for a given period."—

such proposed amendment was inexpedient at that time; but also resolved that the senators and representatives from Ohio be requested to use their best endeavors to have a law passed laying a tax of ten dollars on every slave imported into the United States, and also to prohibit their importation into any of the territories thereof. On December 25, 1806, however, the Legislature adopted a "Resolution requesting our senators and representatives in Congress to use their exertions to procure the passage of a law, prohibiting the importation of slaves into the United States or the territories thereof * * * so soon as the constitution will admit of the same."[117]

In 1804, the Massachusetts Legislature passed a resolution instructing their Senators in Congress to take all proper measures to obtain an amendment * * * so that representatives may be apportioned among the several States according to the number of their free inhabitants respectively, and requested the legislatures of other States—Ohio included—to take similar action.

On December 26, 1804, the Ohio Legislature adopted a resolution (O. L., III, 466-7), reciting, among other things:—

> "that the constitution of the United States, in some of its leading features, is the result of compromise and mutual balancing of interests between the several States, particularly that clause which admits a partial representation of slaves; that the inequality of representation complained of * * * does not exist at present; and that to interfere, at this time, with that part of the constitution which may be viewed as securing privileges to particular States, would tend to excite State jealousies, destroy that confidence and good under-

[117] O. L., V. 142

standing which now prevails, and endanger the union of the States, Therefore,

Resolved, That the said amendment to the Constitution of the United States, is inexpedient, and does not meet the approbation of this legislature."

In 1815, Massachusetts and Connecticut proposed seven amendments to the constitution of the United States and among them:—

1st. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers of *free* persons, including those bound to service for a term of years, and excluding Indians, not taxed, and all other persons."

On January 17, 1916, the Ohio Legislature—

"*Resolved, uananimously*, * * * That it is inconsistent with good policy to adopt the said amendments, and that this general assembly do not concur therein."[118]

By such resolutions of State legislatures and the *obiter dicta* of judges, in cases which had nothing to do with the apportionment of taxes or representation among the several States, the "three-fifths rule" came to be invested with a peculiar sanctity which protected it from amendment, although there is not a word in the Constitution itself which exempts it from the liability to amendment which attaches, with two exceptions, to every other provision. Article V, of the Constitution, which authorizes amendments and prescribes the steps necessary to be taken to validate them, contains this proviso:—

"Provided that no Amendment which may be made prior to the year one thousand and eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the First Article; and that no State without its Consent shall be deprived of its equal Suffrage in the Senate."[119]

On the familiar principle, *expressio unius, exclusio alterius*, any amendment to the first clause of

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[118] O. L., XIV., 460-1.

[119] *Charters & Constitutions*, I., 19.

the ninth section of the first article could be made at any time after January 1, 1908. The wording of the entire article shows that the Convention knew how to make any provision immune against amendment, either temporarily, or for all time. The fact that no such provision was made with regard to the three-fifths rule demonstrates that the ability to amend that rule was just as much a part of the compromise as the rule itself.

The same may be said of the Article in the United States Constitution providing for the reclamation of fugitives from labor. The Ordinance for the Government of the Northwestern Territory, enacted more than two months prior to the signing of the Constitution by the delegates from the several States, recited that certain Articles should "be considered as articles of compact, between the original States and the people and States in the said territory, and *forever remain unalterable unless by common consent.*[120]

Article VI provided:—

> "That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the persons claiming his or her labor as aforesaid."[121]

It was contended by persons, who wished to introduce slaves into the Indiana Territory after Ohio had become a State of the Union, that this Ordinance, being merely a Congressional enactment, could be altered, amended or repealed by any subsequent Congress, and therefore that the recital that it should "forever remain unalterable unless by common consent" was a *brutum fulmen.* In December, 1805, a petition was presented to Congress praying for a suspension of the first part of Article VI, "There shall be neither slavery nor involuntary servitude in the said territory" etc., and on February 14, 1806,

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[120] *Charters & Constitutions*, I., 431. [121] Ibid., 432.

the committee of the House of Representatives to whom the petition was referred, reported in favor of granting it. No action having been taken by that Congress, William Henry Harrison, Governor of the Territory, transmitted certain resolutions which he said had been *unanimously adopted* by the Territorial Council and House of Representatives, in favor of suspending the obnoxious anti-slavery clause. This communication was laid before the House of Representatives by the Speaker, January 20, 1807. A committee of the House, to whom they were referred, again reported favorably and the House passed a bill suspending the prohibition of slavery, but it failed in the Senate. It seemed that no one in the Northwestern Territory, or in Congress, regarded Article VI as "forever unalterable;" and, if the first clause could be suspended, or set aside, by a mere Act of Congress and the consent of the Territorial Legislature, the *proviso* relating to the reclamation of fugitives from labor could also be suspended or set aside. Anti-slavery men in Ohio could well afford to accept the reasoning and conclusions of the pro-slavery men, but for one stubborn fact. The Constitution of the United States had been adopted after the Ordinance of 1787, and had become the supreme law of the land. This Constitution contained a provision for the reclamation of fugitives from labor; it did not contain a prohibition of slavery within the bounds of the Northwestern Territory, or any of the States organized therein.

The Constitution of Ohio, adopted November 29, 1802, provided:—

"ARTICLE VII

"SEC. 5. * * * But no alteration of this constitution shall take place, so as to introduce slavery or involuntary servitude into this State."[122]

[122] Ohio Laws, I. Appendix, p. 16.

"ARTICLE VII.

"SEC. 2. There shall be neither slavery nor involuntary servitude in this State, otherwise than for the punishment of crimes." etc.[123]

The act of Congress, known as the Fugitive Slave Law, passed February 12, 1793, was accepted as a part of the law of the land and reprinted in at least five volumes of Ohio Laws between 1804 and 1831, as before stated.[124] The so-called "Black Laws" of Ohio were intended to conform to it, so far as they relate to the reclamation of run-away slaves. There seems to have been little difficulty at first in the enforcement of either; perhaps, because there was little occasion for such enforcement until the increase in the value of slaves and the steady demand for them "down the river." This condition of things resulted in more escapes from Kentucky into Ohio, more energetic pursuit, more attempts, by force or fraud, to carry off free negroes, and more collisions between slave catchers and white sympathizers with the persecuted blacks, whether fugitives or freemen.

Kentucky, probably, lost more slaves by flight than any other State in the Union, because of its extensive northern frontier.

In 1817, the Legislature of Kentucky adopted resolutions complaining of the States north of the Ohio river for not passing and enforcing laws for the more effectual reclamation of "fugitives from labor." To a letter of the Kentucky Executive transmitting a copy of these resolutions to be laid before the Legislature of Ohio, Governor Thomas Worthington replied, October 23, 1817:—

"I can assure you, Sir, that so far as I am informed there is neither a defect in the laws nor want of energy on the part of those who execute them. That a universal prejudice against the principles of slavery does exist and is cherished, is to be expected, and that a desire as universal to get rid of

[123] Ibid., p. 22.

[124] *Supra*, p. 46.

every species of negro population exists, is, in my opinion, as certain. The fugitive act is fully executed. You know, Sir, that the writ of *habeas corpus* cannot be denied, and that it too often happens that the proofs of the right of property are defective. Under such circumstances the judge must act according to the facts."[125]

On the other hand, Ohio had complaints to make of the operations of slave-catchers in her borders, and, on January 25, 1819, the General Assembly passed "AN ACT to punish Kidnapping"[126] directed at the lawless operations of these gentry. The preamble refers to the Fugitive Slave Act of 1793, and proceeds:—

"Whereas, It has been represented to this general assembly, that upon pretence of seizing fugitives from service, under the provisions of the before recited act, unprincipled persons have kidnapped free persons of colour within this State, and sell them into slavery; and whereas it is necessary and proper to put a stop to this nefarious and inhuman practice: Therefore,

SEC. 1. Be it enacted * * *, That if any person, or persons, under any pretence whatsoever, shall by violence, fraud or deception, seize upon any free black or mulatto person, within this state, and keep or detain such free black or mulatto person in any kind of restraint or confinement, with intent to transport such free black or mulatto person out of this State, contrary to law, or shall in any manner attempt to carry out of the state any black or mulatto person, without having first taken such black or mulatto person before some judge of the circuit or district court, or justice of the peace, in the county wherein such black or mulatto person was taken, agreeable to the provisions of the above recited act of congress, and then prove his right to such black or mulatto person, every such person so offending, shall be deemed guilty of a high misdemeanor; and on conviction thereof before any court having competent authority to try the same, shall be confined in the penitentiary of this state at hard labour, for any space of time not less than one nor more than ten years, at the discretion of the court."

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[125] Mss. quoted in William Henry Smith, *Political History of Slavery*, I., 21.

[126] Ohio Laws, XVII., 56 to 58 incl.

This act was reenacted and reprinted in 1824[127] and 1831.[128]

The more numerous, and the more valuable, the "fugitives" became, the more profitable the chase, and slave catchers became more and more reckless as to whom they seized and how they carried them off. They naturally preferred to avoid the delay and expense of appearing before Judges and justices with their prey and proving ownership in themselves, or their employers. They were very willing to act on the principle, "When in doubt take the trick." If they could get out of the State with a colored man, it would be easy to find or improvise an owner for him, even if he had never seen his "property" before.

The extremes to which man stealers were willing to go in making gain out of the sale of human flesh is indicated in "AN ACT, To prevent the Forcible Abduction of the Citizens of Ohio," passed June 19th, 1835, which provided:—

> "That any person or persons, who shall kidnap, or forcibly or fraudulently carry off, or decoy out of this State, any *white* person, or persons, with an intention of having such person or persons carried out of the State, unless it be in pursuance of the laws thereof; and shall be thereof duly convicted * * * shall be deemed guilty of a misdemeanor, and shall be confined in the Penitentiary at hard labor, for any space of time not less than three nor more than seven years, at the discretion of the Court; and shall, moreover, be liable for the costs of prosecution."

On March 9, 1838, the Legislature passed the following "PREAMBLE AND RESOLUTION:—[130]

> "Whereas, It is represented to this General Assembly that Eliza Jane Johnson, a free woman of color, was lately carried by force, and without legal authority, from her home in Brown county, Ohio, into Mason county, Kentucky, on the pretence of being a slave of Arthur Fox, of said county of Mason, and though the said Arthur Fox disclaims any

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[127] O. L., XXII., 338.
[128] O. L., XXIX., 442.
[129] O. L., XXXIII, 5.
[130] O. L., XXXVI, 410-11.

title to said Eliza, she is still detained in confinement in the jail of said county: Therefore,

Resolved, That his Excellency the Governor be, and he is hereby requested to open a correspondence with the Governor of Kentucky, in relation to the illegal seizure and forcible removal of said Eliza Jane Johnson, from Brown county, Ohio, to Mason county, Kentucky, where she is detained in prison, and that he respectfully insist on the restoration of said Eliza Jane Johnson to the enjoyment of freedom and friends."

The complaints of the Kentucky legislature derived some support from the fact, revealed by the United States Census Reports, that in 1810 there were but 1,899 blacks in Ohio; that in 1820 there were 4,723; in 1830, 9,568; in 1840, 17,342, and in 1850, 25,279. Of the latter more than half were born outside of the State. We must attribute much of the gain in the black population to immigration from slave States. Still, it would be far from just to say any large proportion of those who remained in the State were "fugitives from labor." Many, like the Langston brothers, were manumitted by their masters. Statistics are not available to show how many passed through the State on the "underground railroad," bound for Canada.

On February 26, 1839, the Legislature passed a very elaborate "ACT Relating to Fugitives from labor or service from other States."[131] The preamble recited among other things that:—

"the laws now in force within the State of Ohio are wholly inadequate to the protection pledged by this provision of the constitution to the southern States of this Union;"

As the Act of Congress of February 12, 1793, was a law in force, within the State and so recognized, the criticism extends to that also; but it was for Congress—not the Legislature of Ohio—to make good the deficiencies of that law.[132] The Ohio law prescribed the mode of procedure to be followed by

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[131] O. L., XXXVII, 38 to 43 incl.

[132] *Prigg v. Pennsylvaniea*, 16 Pet. 539

the claimant of any alleged fugitive, and contained provisions tending to protect colored people from being spirited away by false claimants, without a hearing. For instance, the claimant was required to take the alleged fugitive "*before some judge of a court of record in this State residing in the county in which such arrest is made*" and "*no such arrest shall be made by any sheriff or constable of this State without the limits of his own proper county.*" No certificate of ownership "shall be deemed a sufficient authority for the removal of such fugitive * * * unless the official character of the officer giving the same be duly authenticated," by his hand and official seal. *If the person so arrested and brought before the judge should file an affidavit that he does not owe labor or service to the claimant and that he believes he will be able to produce evidence to that effect, the judge was to give him time, not exceeding sixty days, within which to produce such evidence* and meanwhile he would be committed to the county jail, there to be kept at the expense of the claimant, unless he could give bond in the sum of one thousand dollars with sufficient sureties, to be approved by the judge conditioned on his appearance at the time and place appointed for the trial and that he would abide by the decision of the judge who should try the case.

The following provisions are of interest:—

"SEC. 9. It shall be the duty of all officers proceeding under this act to recognize, without proof, the existence of slavery, or involuntary servitude in the several states of this Union in which the same may exist or be recognized by law."

"SEC. 11. If any person or persons shall in any manner attempt to carry out of this State, or knowingly be aiding in carrying out of this State, any person, without first obtaining sufficient legal authority for so doing, according to the laws of this State or of the United States, every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be imprisoned in the penitentiary and kept at hard labor, not less than three nor more than seven years."

All of the provisions noted were reasonable and not in contravention of the rights of a real owner to reclaim a run-away slave really belonging to him; but, January 19, 1843, this last act was repealed and the second section of "AN ACT to prevent kidnapping," passed February 15, 1831, was revived.[133] This action was brought about by the decision of the United States Supreme Court in Prigg v. Pennsylvania, at the January term, 1842,[134] holding that—

> "The clause relating to fugitive slaves is found in the national constitution, and not in that of any State. * * * The natural, if not the necessary, conclusion is, that the national government in the absence of all positive provisions to the contrary, is bound, through its own proper departments, legislative, executive, or judiciary as the case may require, to carry into effect all the rights and duties imposed upon it by the Constitution.
>
> * * * *
>
> It would seem, upon just principles of construction, that the legislation of Congress, if constitutional, must supersede all State legislation upon the same subject; and by necessary implication prohibit it; * * * it cannot be that the State legislatures have a right to interfere."[135]

This decision was hailed as a welcome relief, on the part of the Ohio Legislature, Courts and Executive, from all responsibility for the return of fugitive slaves and, thenceforth, no effort was put forth by either to assist claimants in recovering their alleged "property." What was done in that line, from 1843 to 1850, was done through United States courts and officials. The acts respecting kidnapping remained in force.

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[133] O. L., XLI, p. 13.

[134] 16 Peters, 529 to 674 incl.

[135] Ibid., 541.

THE WESTERN RESERVE AND THE FUGITIVE SLAVE LAW OF 1850.

In the Convention which framed the original Constitution of Ohio, two delegates were seated from Trumbull County, which was then co-extensive with the Western Reserve. This representation was based on an estimate that the population of the Reserve was about one eighteenth of the whole. From 1802 to 1850 the settlement of the Reserve proceeded more rapidly than that of most other portions of the State, and its representation in the State Legislature increased from one-eighteenth in 1802 to one-tenth in 1820, two-seventeenths in 1830, two-thirteenths in 1840, and about one-sixth in 1850. The settlers, up to this time, were almost wholly of New England stock, even when their last point of departure was in New York or Pennsylvania. It was an enterprising, virile, intelligent and homogeneous community of farmers with just enough millers, manufacturers, merchants and professional men to supply the local demand. The local laws of Ohio show the incorporation on the Reserve of schools, academies, institutes, colleges, libraries, literary societies, lyceums, etc., in proportion to population, far in excess of that shown by any other portion of the State. The colonists intended that their children should have the benefits of a liberal education. The parents themselves were generally readers of the county newspapers, and of weekly or semi-weekly papers[136] published in New York or Boston. The editors and professional men were readers of the *Federalist* and the *Madison Papers*. The Constitution was the subject of constant study and individual interpretation.

One or more weekly papers were published at

[136] The Independent and the Semi-weekly Tribune (Commonly pronounced Try-bune) had a wide circulation; but the latter lost favor in 1858 to 1860 when it advocated support of Douglas by the Republican party.

every county seat. The editors were generally well educated and took an active part in local politics, serving on State and county executive committees, attending political conventions, and often being sent to represent their respective districts in the Legislature. The typography and general appearance of their weekly issues might successfully challenge comparison with any similar publications of the present day. The editorials were generally well thought out and well expressed, and the selection and arrangement of reading matter was calculated to interest and inform the readers about all political, religious and social topics of the day. It would be hard to find any superiors to the Western Reserve Chronicle, published at Warren; the Portage Democrat, published at Ravenna; the Mahoning Register, published at Canfield and Youngstown, the Ashtabula Sentinel, published at Jefferson, the Summit County Beacon, of Akron, and the Painesville Telegraph.

One peculiarity of the population of the Reserve down to 1850 was that it contained almost no persons of foreign birth, until the building of railroads and opening of mines brought in numbers of Irishmen and Welshmen. In 1850, Cleveland had only 17,034 inhabitants and nearly all were native born. Very few blacks were found on the Reserve prior to 1850. The following table shows the number of such people found in the respective counties at five successive censuses:—

County	*1820*	*1830*	*1840*	*1850*	*1860*
Ashtabula	4	11	17	43	25
Cuyahoga	54	21	121	359	894
Erie	not organized		97	202	149
Geauga	6	21	3	7	7
Huron	7	7	106	39	79
Lake	not organized		21	38	36
Lorain	not organized	3	62	264	549
Mahoning	not organized			90	61
Medina	14	12	13	35	38
Portage	32	66	39	58	76
Summit	not organized		42	121	88
Trumbull	50	43	70	65	80
Totals	167	184	591	1,321	2,082

The rapid increase of the black population in Cuyahoga and Erie between 1840 and 1850 was due to the growth of the cities of Cleveland and Sandusky and the opportunities for employment about the docks, railroad terminals, hotels and barber shops. The increase in Lorain County was due chiefly to the opportunities for obtaining an education, which were given to the blacks on the same terms as to the whites, at Oberlin. The increase from 1850 to 1860 was mostly confined to Cuyahoga and Lorain counties, and, in five of the twelve counties, there was a decline in the negro population.

The interest of the politicians in such counties as Ashtabula, Geauga, Medina and Portage in all questions concerning the welfare of the black race seems to have been in inverse ratio to the numbers of such race found in their respective counties.

The blacks were not numerous enough in any Western Reserve community to excite racial hostility. Attempts to awaken fears that their sons or daughters might marry negroes—so potent elsewhere —only provoked laughter on the Reserve. Abstract theories of right and wrong were not distorted by self interest. To the student and philosopher this was an advantage; but to the politician, in search of a sure foundation on which to build, it was a disadvantage. Selfish interest exerts an influence over political and legislative action, far more persistent and powerful than any abstract idea. The success of slave owners in the South and of protectionists in the North, in controlling Congressional legislation and executive action for three quarters of a century, is a striking demonstration of this theorem. Down to 1826, people of the Western Reserve generally voted the Democratic State ticket, because there was no other. The Independent Democrat, of Elyria, the Portage Democrat, of Ravenna, the Jeffersonian Democrat, of Chardon, and many other "Weekly Democrats" were projected when almost all men

were content to be called Democrats; and the proprietors saw no reason for changing the names of the papers and losing their good-will, when they ceased to adhere to that party.

The people of the Western Reserve turned toward the Whig party, as they saw the Democratic party come more and more under the control of the slave power. They did not propose to interfere with slavery in any of the States where it was established, but they were opposed to its extension to any other States or Territories, and they intended to abolish it in the District of Columbia as soon as they had the power to do so. Their votes decided the State elections in favor of the Whigs in 1826, 1828, 1830 and 1836. In November, 1838, Henry Clay wrote:—

> "In Ohio, the Abolitionists are alleged to have gone against us [the Whigs] almost to a man." "The introduction of this new element of abolition into our elections cannot fail to excite with all reflecting men the deepest solicitude."[137]

They helped elect Corwin, Whig candidate for Governor, and Harrison, Whig candidate for President, in 1840, but their apathy enabled the Democrats to win the State election in 1842. Ohio gave Clay, Whig candidate for President, a plurality of 5,940 in 1844; but 8,050 votes were cast for James G. Birney, the candidate of the Liberty party.

Our two party system has its advantages; but an element in both parties was becoming greatly dissatisfied with the dominating element. There were "Free Democrats" and "Independent Democrats" in the one, and "Progressive Whigs" and "Free Soilers" in the other—all opposed to the extension of slavery to new territory, to the annexation of the slave State Texas, to the war with Mexico, and to every effort of the slave owners to extend and nationalize their "peculiar institution." There was little to be gained by changing from one party to another,

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[137] Schurz, *Henry Clay*, II., 163.

and effective protests against the aggressions of the slave power could only be registered by throwing away votes. Henry Clay, personally very popular with the masses, made the fatal mistake of trying to hold the pro-slavery Whigs of the South in line, by a series of so-called "Alabama Letters" in which he announced that he should not object to the annexation of Texas, *provided*, etc. It is not likely that he gained a single electoral vote in the South by his qualified acquiescence in annexation and it is certain that he alienated large numbers of the anti-slavery Whigs of the North who either did not vote at all, or voted for Birney.

One of the popular campaign songs, sung by the "Hutchinson Family," at many political meetings on the Reserve, had this refrain;

> "Clear the track for Emancipation!
> Cars cannot run on a Clay Foundation."

The 65,608 votes cast for James G. Birney would, if cast for Henry Clay, have given him a popular majority of 27,433, and an electoral vote of 146 to 129. Birney received 15,812 votes in New York State, one-third of which, if cast for Clay, would have given him the 36 electoral votes of that State and made him President.[138]

Birney's vote was an evidence of sheer desperation on the part of anti-slavery men and a warning signal that should have been heeded by those who were running the Whig party.

The attitude of a majority of the people of Ohio, at this time, is shown by the election of Thomas Corwin, an eloquent and outspoken opponent of Texas Annexation and the Mexican War of Conquest, to the United States Senate, and by the "PREAMBLE AND RESOLUTION Relative to the annexation of Texas," adopted by the Legislature, January 17, 1845, in which the following langauge was used:—

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[138] McKee, *National Conventions & Platforms*, 56 *and* 57.

"We do solemnly and earnestly protest against any proceeding of the government of the United States or any branch or department thereof, having for its object the annexation of Texas to the United States. * * * fourth, because it would involve us in the guilt, and subject our country to the reproach of cherishing, sustaining and perpetuating the evils of slavery—fifth, because an union between the United States and Texas, with the guaranty, or understanding, that the whole or any part of the territory of Texas shall be formed into a state or states where slavery shall be permitted to exist, and where slaves shall be counted in determining the relative weight of such states in the Federal Union, would still farther extend the undue advantage which the citizens of the slaveholding states have over those of the states in which slavery is not permitted."[139]

On February 8, 1847, the Legislature adopted Joint Resolutions demanding that Slavery be excluded from Oregon Territory and any other territory which may hereafter be annexed to the United States.[140]

On February 24, 1848, the Legislature adopted "RESOLUTIONS Relative to the acquisition and control of foreign territory by the United States," in which the following language was used:—

"*Resolved* * * * That whatever difference of opinion may exist as to the power of Congress to prohibit the formation of slave States out of the territory belonging to the federal government, and entitled to admission to the Union, there cannot be any rational ground for such difference of opinion as to territory that may be hereafter obtained by conquest or by purchase" and—

"*Resolved*, That the present war with Mexico was neither sought nor advised by the State of Ohio. * * * her citizens have been with the national flag, and have attested their devotion to it on many fields and through divers perils * * * She hereby protests by every drop of blood that has been spilt by her citizens, by every flag that has been enrolled from her borders, by the spirit of her sisterhood with the American States, that any territory acquired either by purchase or by conquest, as the result of this war, shall be national territory; and the State of Ohio must be heard, and will have a share in determining the character of the institutions by which such territory shall be governed."[141]

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[139] O. L., XLIII, 437. [140] O. L., XLV, 214. [141] O. L., XLVI, 300.

On February 22, 1848, a Whig legislature endorsed the course of Senator Thomas Corwin in opposing the Mexican War, and resolved, among other things:—

> "That the State of Ohio repudiates, as a libel upon the constitution of the United States, the degrading and pernicious dogma, which asserts, that when the nation is once involved in a war with a foreign country, no matter by what means or for that ends, it is the prerogative of the president to determine the purpose for which it shall thenceforth be carried on, and the measure of its duration.
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> That congress does possess and may exercise the right to interfere with this kingly attribute, when asserted or claimed by the president; and that it can never be the duty of the representatives of the States and of the people tamely and submissively to bow to the dictates of executive will, and humbly to subserve its behests, by transcribing into the form of legal enactment the imperious requisitions of the President for supplies of money and of men."[142]

On February 25, 1848, the Legislature adopted a "RESOLUTION Declaring that so much of the Ordinance of 1787 as relates to slavery, should be extended to the territory acquired from Mexico."[143]

On March 24, 1849, the Legislature adopted a JOINT RESOLUTION Relative to Slavery and the Slave Trade in the District of Columbia, instructing "our Senators and Representatives in Congress * * * to use all constitutional means for the abolition of slavery in the District of Columbia."[144]

It was this Legislature which was forced, by a few Western Reserve men, to elect Salmon P. Chase as United States Senator by the Democratic party, although he was not the choice of that party and had really acted with the Liberty Party in 1843 and 1844.[145] The Western Reserve men were again potent in elect-

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[142] O. L., XLVI., 299. [143] Ibid., 314. [144] O. L., XLVII, 396.

[145] At a memorial meeting held by the Cincinnati Bar, after the death of Chief Justice Chase, Judge H. C. Whitman said among other things: "Standing as Mr. Chase there did, as the representative of thirteen delegates of a small portion of the State, representing as he did neither the Democracy nor the Whigs, neither party liking him, if it had not been for his manly course from beginning to end * * * he never would have been elected." Warden, *Chase*, 324.

ing Benjamin F. Wade as United States Senator, in 1851, to succeed Thomas Corwin, who had not measured up to their expectations.

These extraordinary achievements of a resolute minority of Ohio voters presaged a disintegration of one or both of the old parties and the formation of a third party which should be stronger than either. The process, which might otherwise have proved gradual was hastened by the so-called "Compromise Measures" carried through Congress in 1850 by the combined action of Henry Clay and Daniel Webster, the two great leaders of the Whig party.

The Democratic party had succeeded in their program of annexing Texas; of wresting from Mexico an immense tract of land between the Nueces River and the Rio Grande, which the Texans claimed but had never organized or occupied; of defeating Mexico in the war which ensued; and of acquiring from Mexico, by forced treaty, additional territory out of which have since been formed the six great States of California, Nevada, Utah, Colorado, Arizona and New Mexico, and all of which had been free from slavery under the laws of Mexico.

The avowed purpose of the administration in prosecuting annexation and war on Mexico was to acquire additional territory to be carved into slave States and secure to the slave power full control of the United States Senate with at least an even chance of controlling the House of Representatives. Texas was to be carved into four States and the rest divided as circumstances might require.

This program was not at all to the liking of a majority of the Northern people, and every step was taken contrary to resolutions of protest in Northern State legislatures and in spite of the determined opposition of northern members of Congress—chiefly Whigs. The Whigs had elected General Zachary Taylor their candidate for President in 1848 by a plurality of 139,557 in the popular vote and a majority

of 36[146] electoral votes over Lewis Cass, the Democratic candidate. The Whigs adopted no nationa platform, relying on the popularity of their candidate and the unpopularity of the measures set forth in the Democratic platform. They succeeded this time, but it was their last victory in national politics. The American voter with firm convictions, does not long remain attached to a party which has no principles which it dares avow. The "Free Soil" party nominated Martin Van Buren on a platform boldly declaring:—"a common resolve to maintain the rights of free labor against the aggression of the slave power, and to secure free soil to a free people;" that the old parties had stifled the will of a great constituency and, "under the slave holding dictation," nominated "candidates neither of whom can be supported by the opponents of slavery extension without a sacrifice of consistency, duty and self-respect;" that "the entire history of that period," preceding and following the adoption of the Constitution, "clearly shows that it was the settled policy of the nation not to extend, nationalize, or encourage, but to limit, localize and discourage slavery; and to this policy, which should never have been departed from, the government ought to return;" "that in the judgment of this convention Congress has no more power to make a slave than to make a king; no more power to institute or establish slavery than to institute or establish a monarchy;" "that the true and, in the judgment of this convention, the only safe means of preventing the extension of slavery into territory now free is to prohibit its extension in all such territory by an act of Congress;" "that we accept the issue which the slave power has forced upon us; and to their demand for more slave States and more slave territory, our calm but final answer is; No more slave States and no more slave territory. Let the soil of our extensive

[146] McKee, *National Conventions & Platforms*, 71, 72.

domain be kept free for the hardy pioneers of our own land and the oppressed and banished of other lands;" "that we inscribe on our banner, 'Free Soil, Free Speech, Free Labor, and Free Men,' and under it we will fight on, and fight forever, until a triumphant victory shall reward our exertions." [147]

On this platform Van Buren polled 291,263 votes—120,510 in New York State and 38,058 in Massachusetts, largely contributed by dissatisfied Democrats, and 35,354 in Ohio and 10,389 in Michigan, contributed almost wholly by dissatisfied Whigs.[148] The Democrats retained control of the Senate by a majority of 8 over all, and the House of Representatives by the narrow majority of 5. [149]

The growth of the dissenting element in both parties had its significance; but the whole scheme of the slave power was wrecked by the discovery of gold in California and the rush of men from the free States to that El Dorado. The greed for gold overwhelmed and defeated the greed for more slave territory. No statesman could claim credit for this extraordinary and unforeseen emigration of the free to the newly acquired Mexican territory. And, as events proved, no political combination could long postpone the inevitabe consequences.

Congress had been unable to pass any law for the territorial government of the newly acquired territory, or, in the language of General Taylor, "to substitute law and order there for the bowie knife and revolvers," owing to the insistence of Northern men upon the "Wilmot Proviso," providing that in all such territory slavery should be forever pro-

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[147] McKee, *National Conventions & Platforms*, 67, 68.

[148] Ibid., 71. Chase wrote in March, 1849, "In Massachusetts and in the northern counties of Ohio, the profound anti-slavery convictions of the people made it impossible for them to support national nominees without any declaration against the extension of slavery." Warden, 319.

[149] Ibid., 73.

hibited.[150] So, immediately after his inauguration as President, Taylor sent a confidential agent to California to act with the military governor in promoting the formation of a State government.[151] A constitutional convention was assembled at Monterey, by order of General Riley, September 1, 1849, and after deliberating about six weeks completed a constitution, which was submitted to the people and ratified November 13, 1849, by a vote of 12,061 for to 811 against. This constitution followed closely those of the eastern and central western States and provided among other things:—

> "Neither slavery nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this state."[152]

The application for admission of the whole of California as a State in the Union, with such a constitution, was received by the pro-slavery men with consternation. The whole edifice built upon the annexation of Texas, the extension of its borders, the war with Mexico and the acquisition of more territory, for the purpose of extending slavery and securing the preponderance of the slave power in national affairs, was rudely shattered. The admission of the State, with its designated boundaries and free constitution, was violently opposed. All the supposed grievances of North and South were aired in the ensuing debate and nearly all the arguments of the pro-slavery men threatened, or predicted, a dissolution of the Union unless the Constitution was so modified as to give Southern men what were termed "equal rights" in the new State. By "equal rights" they meant the right of Southern slave holders

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[150] A motion instructing the committee on Territories to bring in a bill for organizing California and New Mexico with the least possible delay and excluding slavery therefrom was made by Joseph M. Root, of Sandusky ,and carried by 108 to 80.

[151] *Messages of the Presidents*, Vol. V., 27, 41.

[152] *Charters & Constitutions*, I., 195, 196, 207.

to take their slaves there and establish and maintain slavery. There was more passion than logic in most of the arguments. It did not seem to occur to them that Southern men could go to, and reside in, such a State just as every other man did or could—without slaves.[153]

Calhoun's last speech was made during this debate. To meet the argument that California always had been free territory and that the clause in the State Constitution prohibiting slavery was adopted without dissent, he formulated the dogma that, the moment the treaty with Mexico was signed, the Constitution of the United States, *ipso facto*, imported slavery into the newly acquired territory, and to exclude it, later, was a wanton violation of the rights of the South—by which he always meant slaveholders of the South. In order to give any plausibility to his argument he had first to import into the Constitution of the United States a provision, which was not expressed in words, making slavery a *national* and not merely a local institution. As one of the debaters said, "In the estimation of John C. Calhoun the Constitution of the United States is a mere nose of wax to be twisted into any shape desired by the South." When he went outside of the Constitution to find support for his thesis he was met by a mass of contemporary argument and elucidation to show that slavery was in process of extinction everywhere, except in four or five Southern States, and it was confidently believed that it would soon be abolished in all except possibly South Carolina and Georgia.

Judging from the arguments used by other Southern men, two other principles had become firmly imbedded in the Constitution, though not

[153] Senator Toombs declared that the Mexican law prohibiting slavery was still valid and would so remain; that Congress and not the courts must change the law. He demanded that what was recognized by law as property in the slave-holding States should be recognized in the Mexican territory. "We can permit no discrimination against our section or our institutions, in dividing out the common property of the republic." Stovall, *Robert Toombs*, 61-2.

expressed in its language, or imported by Constitutional amendment. These were:—

1. The line of 36 degrees and 30 minutes north latitude extended from the Mississippi River to the Pacific Ocean, and all States north of that must be free and all States south of that must be slave. This required that California should be divided by that line into two States, one free and one slave. This rested on the so-called "Missouri Compromise," of 1820.

2. No new free State can be admitted to the Union if that would give the free States a majority in the United States Senate. This rests, it was claimed, on uniform practice ever since the State of Vermont was admitted in 1791.[154] It is true that the Constitution was adopted by thirteen States, seven of which were, or soon became, free, and that the free States were in the majority after the admission of Ohio in 1803, and it was nine years before the balance was restored by the admission of Louisiana. It is true that the slave States were in the majority after the admission of Arkansas in 1836, and again after the admission of Florida and Texas in 1845,

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[154] The following table shows the order in which new States were admitted, the dates of admission and to which column, free or slave, they belonged.

Name of State	*Date*	*Free*	*Slave*
Vermont	1791	1	
Kentucky	1792		1
Tennessee	1796		1
Ohio	1803	1	
Louisiana	1812		1
Indiana	1816	1	
Mississippi	1817		1
Illinois	1818	1	
Alabama	1819		1
Maine	1820	1	
Missouri	1821		1
Arkansas	1836		1
Michigan	1837	1	
Florida	1845		1
Texas	1845		1
Iowa	1846	1	
Wisconsin	1848	1	
Totals		8	9

and that it was three years before the balance was restored by the admission of Wisconsin.

What a convenient Constitutional provision, which may, or may not, remain in force, as circumstances may require!

The "Missouri Compromise," which gave significance to the parallel of 36° 30′, related specifically to the Louisiana Purchase and could be prolonged, by interpretation, to the east or west of its boundaries. The South had already organized three slave States in the Purchase, south of that line, and but one free State had been admitted north of that line.

There was, however, a cry from all parts of the South against the admission of California with a Constitution prohibiting slavery. Newspapers, legislatures, and local conventions demanded that the right of slaveholders to take their slave property with them into all of the newly acquired territory be expressly recognized and secured. On the other hand, Northern Legislatures—Ohio's among them—newspapers and local conventions demanded the immediate admission of California with its free Constitution, and the organization of territorial governments for all the rest of the land acquired from Mexico, with the Wilmot Proviso excluding slavery therefrom. A call was issued for a Southern popular convention to be held at Nashville, June 20, 1850, to consider the interests of the South and take such action as may seem necessary, and open threats of disunion were uttered all through the South. How much of this was mere bluff and chatter, designed to force Congress to take action satisfactory to the slave interest, it is impossible to say.

Henry Clay, however, was greatly alarmed and believed that, now if never before, extreme Southern men meant exactly what they said and that the Union was in imminent danger of being destroyed. He took into consideration all the complaints and

demands made and arguments used by both Northern and Southern men and evolved a series of resolutions, intended to give some satisfaction to all and to call for such concessions on the part of each as could be reasonably hoped for in return for similar concessions by the other. These, with various other resolutions on the same general subject, were referred, April 18, 1850, to a select committee of thirteen, with Clay as chairman, and such men as Daniel Webster and Lewis Cass from the North, and William R. King, James M. Mason and John Bell from the South. On May 8, 1850, the committee submitted a report consisting of three bills and an elaborate argument.

To the North was conceded (?) the admission of California; but this was coupled with, and conditioned upon, the organization of territorial governments in Utah and New Mexico *without* the Wilmot Proviso, and the fixing of the west and north boundaries of Texas so as to exclude any part of New Mexico, for which Texas was to be duly compensated in money. The bill, combining these various measures, was aptly termed the "omnibus bill' by President Taylor.

Another concession to the North was the proposed bill prohibiting the slave-trade in the District of Columbia, thus removing from the Capital one of the most odious features of slavery, though slavery itself was to remain until Maryland chose to abolish it.

Another, wholly illusory, concession to the North was the declaration that the admission of any new State, or States, carved out of Texas should be postponed—until some such State was organized and wanted to come in, when it would be the duty of Congress to admit it!

In return for these concessions (?) to the North, the South was to be given a more effective law for the return of fugitive slaves, three new States to be carved out of Texas, and an even chance to make slave States out of New Mexico and Utah.

The scheme, as a whole, satisfied nobody. President Taylor agreed with anti-slavery men that California was entitled to immediate admission, without any reference to what was done with the rest of the territory acquired from Mexico. He thought the rest should be kept under military rule, until some portion had population and intelligence enough to do as California had done.

President Taylor, who had gradually won the confidence of both Union and anti-slavery men and announced that he would suppress any attempts at dis-union, had a severe attack of cholera morbus after eating dinner July 4th, 1850, and passed away on the 9th.[154a] His successor, Millard Fillmore, reorganized the Cabinet by appointing Daniel Webster, Secretary of State, Thomas Corwin, Secretary of the Treasury, and John J. Crittenden, Attorney General. Fillmore, himself, and every one of the new appointees favored the compromise.

But it was not until August that it was discovered that by separating the compromise measures, the objectors to one or two might be induced to vote for the others and that a majority could thus be obtained for each, although the several majorities would be differently constituted. In this manner, every one of the measures passed the Senate, although in somewhat modified form. The fugitive-slave law was far more drastic than the bill reported by the committee.

In September, all passed safely through the House of Representatives and the Union was saved once more. The North was thoroughly satisfied with the admission of California as a Free State, and the South, as thoroughly dissatisfied. The South

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154a The deaths of the two Whig Presidents, General Harrison and General Taylor, by similar intestinal troubles, just after it became apparent that they could not be controlled by the extreme pro-slavery men, created a strong suspicion in the minds of anti-slavery men that both had been maliciously poisoned, to make room for more yielding successors.

was greatly pleased, and the North as greatly displeased, with the Fugitive Slave law.

The spectre of four new slave-States instead of Texas and eight new Senators instead of two from that region, was sufficiently disturbing to the North, but everything else paled into insignificance when attempts were made to enforce the new Fugitive Slave Act. The features which made this so obnoxious to Northern people were, (1) that a small army of commissioners was to be appointed by the United States Circuit Courts who should have jurisdiction in all matters relating to the capture and removal of alleged fugitives; (2) that these commissioners were to receive a fee of five dollars if they decided that a claimant was *not* entitled to a certificate giving authority to take and remove the alleged fugitive, and ten dollars if he decided in favor of the claimant; (3) that these commissioners were authorized to appoint persons from time to time to execute such warrants as might be issued for the arrest of alleged fugitives; (4) that such impromptu officers were empowered to summon to their aid bystanders or a *posse comitatus* of the proper county, and *all citizens were commanded to aid and assist in the prompt and efficient execution of this law whenever their services should be required;* (5) that *warrants issued by any commissioner should run and be executed by said officers anywhere in the State* within which they are issued; (6) that any person having a power of attorney from a claimant, duly executed and acknowledged before some legal officer or court of the State where the claimant resided, *was thereby empowered to seize or arrest the alleged fugitive, without process,* and bring him before a court or commissioner of the proper circuit, district or county, whose duty it should be to hear and determine the case of such claimant *in a summary manner;* (7) that *an affidavit of ownership* under the seal of the proper court or officer, *and another affidavit as to the identity* of the person

whose service or labor is claimed to be due and that he had escaped, should be *sufficient to entitle the claimant or his agent to a certificate authorizing him to arrest and remove such alleged fugitive to the State or Territory whence he was alleged to have escaped*; (8) "*In no trial or hearing under this act shall the testimony of such alleged fugitive be admitted in evidence, and the certificates* * * * mentioned *shall be conclusive of the right* * * * *to remove such fugitive to the State or Territory from which he escaped and shall prevent all molestation of such person or persons by any process issued by any court, judge, magistrate, or other person* whomsoever;" (9) "That any person who shall knowingly and willingly obstruct, hinder, or prevent such claimant, his agent or attorney * * * from arresting such a fugitive * * * *either with or without process as aforesaid, or shall rescue, or attempt to rescue, such fugitive* * * * *from the custody of such claimant,* * * * *or other persons lawfully assisting;* * * * or shall aid, abet, or assist such person so owing service, * * * directly or indirectly, to escape * * * or shall harbor and conceal such fugitive so as to prevent the discovery and arrest such person * * * *shall for either of said offenses, be subject to a fine not exceeding* $1,000 *and imprisonment not exceeding six months* * * * *and shall moreover forfeit and pay by way of civil damages to the party injured by such illegal conduct the sum of* $1,000 *for each fugitive so lost as aforesaid,* to be recovered by action of debt," etc.; (10) The claimant of any alleged fugitive could apply to any court of record, or judge thereof, in the State where he lived and on proof of ownership and escape have a record made of such facts and also a general description of the person escaping, with such convenient certainty as may be, and a transcript of such record authenticated by the * * * clerk and the seal of the said Court * * * shall be held and taken to be full and *conclusive evidence of the fact of escape and*

that the service or labor of the person escaping is due to the party in such record mentioned. And upon the production by the said party of other and further evidence, *if necessary, either oral or by affidavit* * * * *of the identity of the person escaping, he or she shall be delivered up to the claimant."* * * * *Provided* That nothing herein contained shall be construed as *requiring the production of a transcript of such record as evidence as aforesaid. But in its absence the claims shall be heard and determined upon other satisfactory proofs."*

The above abstract and excerpts point out the objectionable features of a law which was so long that it would fill seven pages in an ordinary 8vo volume.[155]

A wave of indignation swept over the entire North, as soon as the provisions of the new fugitive slave law became known.[156] The Whig party suffered most, because its leaders had been most prominent in bringing forward and advocating the various compromise measures and the Whig administration had used all its influence to promote their enactment into law.

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[155] William Henry Smith in *A Political History of Slavery*, 128-9, says: "The bill reported by Mr. Clay from the special committee of thirteen proposed to effect this in a way that would have been a safe guard to free colored persons beyond anything in the original law, and without disturbing the peace of communities where arrests should be made. * * * As passed, the fugitive slave law was a very different measure, without safe guard for the slave, harsh and repugnant to the sentiments of humanity. * * * If Northern representatives had not shirked their duty it would have been defeated or amended to conform to the original report." Clay was absent on account of ill health when this bill was passed. Rhodes, *History of the United States*, Vol. I., 182-3, says: "On August 23d the Fugitive Slave law was ordered to be engrossed for a third reading, which was equivalent to its passage, buy a vote of 27 to 12. The nays were eight Northern Whigs, * * * three Northern Democrats, and Chase; there were fifteen Northern senators who did not vote. * * * On September 12th, the Fugitive Slave law was carried through the House, under the operation of the previous question, by 109 to 76. * * * Thirty-three representatives from the North were either absent or paired or dodged the vote."

[156] In a letter to J. T. Trowbridge, of Somerville, Mass., quoted in Warden, p. 336, Senator Salmon P. Chase said they were "opposed by a majority of the Ohio Representatives. They were almost universally denounced by the Democratic press in Ohio, and for a time it seemed possible that they might be repudiated by the northern Democracy."

On October 11, 1850, a little over three weeks after the passage of the Fugitive Slave law, a large meeting of citizens of Cleveland was held in Empire Hall, at which a committee on Resolutions was appointed, consisting of Joel Tiffany, Reuben Hitchcock, H. V. Willson, then, a partner of Henry B. Payne, two years later, Democratic candidate for Congress, and later still Judge of the United States District Court for the Northern District of Ohio, O. H. Knapp, and G. A. Benedict, editor of the Cleveland Herald. They reported as follows:—

"1. *Resolved*, That the passage of the Fugitive Law was an act unauthorized by the constitution, hostile to every principle of justice and humanity, and, if persevered in, fatal to Human Freedom.

"2. *Resolved*, That that law strikes down some of the dearest principles upon which our fathers predicated their right to assert and maintain their independence, and is characterized by the most tyrannical exercise of power; and that it cannot be sustained without repudiating the doctrines of the Declaration of Independence, and the principles upon which all free governments rest.

"3. *Resolved*, That tyranny consists in the wilfully violating by those in power of man's natural right to personal security, personal liberty, and private property; and it matters not whether the act is exercised by one man or a million of men, it is equally unjust, unrighteous, and destructive of the ends of all just governments.

"4. *Resolved*, That regarding some portion of the Fugitive Law as unconstitutional, and the whole of it as oppressive, unjust, and unrighteous, *we deem it the duty of* EVERY GOOD CITIZEN *to denounce, oppose and* RESIST, by all proper means, the execution of said law, and we demand its immediate and unconditional repeal, and will not cease to agitate the question and use all our powers to secure that object, until it is accomplished."[157]

In October, 1850, an indignation meeting was held at Canfield, Mahoning County, Ohio, addressed by B. F. Wade, Whig, afterwards Senator from Ohio, Rufus P. Ranney, Democratic candidate for Congress

[157] *Cleveland Leader*, April 14, 1859. *Cleveland Herald*, April 15, 1859. *Western Reserve Chronicle*, April 20, 1859.

in 1848, afterwards candidate for Governor of Ohio and, later still, elected Judge of the Ohio Supreme Court; Matthew Birchard, Democrat, afterwards Judge of the Ohio Supreme Court; Milton Sutliff, Democrat, afterwards Judge of the Ohio Supreme Court, John Hutchins, Whig, afterwards Member of Congress, and Eben Newton, Free Soiler. These men were all prominent citizens and, between them, represented all political parties and most of the people of the Western Reserve. The following account of the meeting and the resolutions adopted are copied from the *Ohio Republican*, of November 8, 1850.

> "The assembled multitude listened with great attention, to the thrilling eloquence and burning indignation of the several speakers, and repeatedly gave evidence of their approbation by shouts of applause.

The resolutions reported by the committee were as follows, and were unanimously adopted:

> *Resolved*, That we regard the "fugitive act," passed by Congress, not only as a gross outrage upon humanity, but as a direct infringement upon the principles upon which our government is founded, and which should ever be maintained by a free people.
>
> *Resolved*, That in striking down, as the makers of this law fain would do, at a blow, the right of trial by jury, and habeas corpus, the right of appeal, the privilege of counsel, and cross examination of witnesses, they have attempted to annihilate the work of progress in the civil history of the world, and to bring back the dark ages of despotism and absolute rule, against which the Constitution of the United States meant effectually to guard by its explicit and solemn guarantee of these inestimable rights.
>
> *Resolved*, That we will unceasingly agitate the question, which this act was designed to settle, till the act is repealed and slavery abolished in all places within the constitutional authority of the general government.
>
> *Resolved*, That the acceptance of the office of Commissioner or Marshal under this act, by any person claiming the privileges of American citizenship, and brotherhood with men, will, as it deservedly should, brand him as a traitor to humanity; and we hope that no man can be found in our

community base enough and bold enough to accept the work of infamy.

Resolved, That we will not, under any political necessity whatever, vote for any man for any office of trust, profit or honor, who voted for or aided, directly or indirectly, in the passage of the act, or approves of its infamous provisions, or aids in its execution.

The following resolution was offered by Judge Brownlee, and unanimously passed with a hurricane of shouts:

Resolved, That, come life or come imprisonment—come fine or come death—we will neither aid nor assist in the return of any fugitive slave, but, on the contrary, we will harbor and secrete, and by all just means protect and defend him, and thus give him a practical God speed to liberty.[158]

The Congressional elections in the fall of 1850, resulted in sending to the House of Representatives 140 Democrats—a gain of 22, 88 Whigs—a loss of 23—and 5 Free Soilers—a gain of 3.[159] Although the Whig party had always contained more abolitionists than the Democratic, the Wilmot Proviso had its origin among the Democrats and was looked upon with no favorable eye by many leading Whigs.[160] The Wilmot Proviso was drafted by Judge Brinkerhoff, Democratic congressman from the Mansfield District, Ohio, and presented by David Wilmot, a Democratic

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[158] Reproduced in *Ohio State Journal*, July 18, 1859; See also *Mahoning Register*, July —, 1859. *Norwalk Reflector*, July 26, 1859; and *Painesville Telegraph*, July 14, 1859. The following is an extract—italics, capitals and all—from a report of the meeting, published in the *Mahoning Index*, of Canfield, O., November 1, 1850, and republished in the *Western Reserve Chronicle*, of Warren, O., October 5, 1859; and *Mahoning Register*, September 22, 1859.

"Next upon the forum was called by the united voice of the meeting Rufus P. Ranney, of Trumbull, a distinguished delegate, to make our Constitution—one of the brightest minds in Ohio, and an old Democrat and nothing else in politics! He exposed not only the INFAMOUS MANNER *in which the bill was rushed through the House under the gag rule of the Southern and infamous oppressors* but in SCATHING AND BLISTERING CURSES *denounced the whole bill as* UNCONSTITUTIONAL(!) and the *miscreants who assisted in its passage by their votes, or fleeing when God and their duty required their aid in behalf of liberty and the rights of blood and life as unworthy of our regard*—AS UNWORTHY OF OUR SUFFRAGE—*now or hereafter*."

[159] McKee, *National Conventions & Platforms*, 73.

[160] Chase to Trowbridge, Warden, *Life of Chase*, 314.

Congressman from Pennsylvania. The Southern wings of both parties, while differing upon such matters as internal improvements at national expense, protective tariffs, etc., were in accord in all matters touching slavery. In Ohio, the Democrats were apparently quite as much opposed to the extension of slavery as the Whigs, until it was made plain that northern Democrats could not hope for recognition from a Democratic administration and appointment to office, while they entertained such sentiments. At a Democratic State Convention held in Columbus, January 8, 1848, Allen G. Thurman, afterwards Democratic candidate for Governor of Ohio, offered, among other resolutions which were adopted, the following:—

> "*Resolved*, That the people of Ohio, now, as they always have done, look upon the institution of slavery in any part of the Union, as an evil and unfavorable to the full development of the spirit and practical benefits of free institutions; and that entertaining these sentiments they will, at all times, feel it to be their duty to use all power, clearly given by the terms of the National compact, to prevent its increase, to mitigate, and finally, to eradicate the evil."[161]

This resolution was re-adopted by the Democratic State Conventions of 1850, 1852, 1853, 1854 and 1855, thus justifying to some extent the hope expressed by Chase that the Democratic party might become the great opponent of the slave power. In 1850, that party elected their candidate for Governor, Reuben Wood, by a plurality of 26,106, over Samuel F. Vinton, and a majority of 9,126 over all. 16,918 votes were cast for Samuel Lewis, Free Soiler. The Whigs had elected their candidate for Governor in 1848 by a vote of 29,118 greater than they gave to Vinton in 1850. It cannot be doubted that the decline in the Whig vote was due to the passage of

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[161] Warden, *Life of Chase*, 316-7; *Painesville Telegraph*, Aug. 4, 1858; *Guhrnsey Times*, Sept. 16, 1858.

the Fugitive Slave law for which the Whig administration was held responsible.

In the Presidential election of 1852 both Democratic and Whig parties endorsed the "Compromise Measures" including "the act for reclaiming fugitives from service or labor," and both agreed to abide by and insist upon the strict enforcement of all acts passed in pursuance of the compromise and to resist all attempts to reopen the slavery question.[162] The anti-slavery Democrats, who revolted in 1848, returned to their allegiance being satisfied that peace with compromise was better than continual wrangling, but the "Progressive Whigs" and Free Soilers either refrained from voting or voted for John P. Hale. The result was an overwhelming victory for the Democrats—Pierce having a plurality of 214,896 in the popular vote and receiving the electoral vote of all but four States—Massachusetts, Vermont, Kentucky and Tennessee.[163] The Democrats secured a majority of 14 over all in the United States Senate, and a two to one majority in the House of Representatives. The Whig party had perished in its attempt to "save the Union."

In his message to Congress, December 5, 1853, President Pierce ushered in the era of harmony and good feeling with the following words:—

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[162] The Democrats resolved to "abide by, and adhere to a faithful execution of the acts known as the 'compromise' measures settled by the last Congress—'the act for reclaiming fugitives from service or labor' included," and further to "resist all attempts at renewing, in Congress or out of it, the agitation of the slavery question, under whatever shape or color the attempt may be made." McKee, 76. The Whigs proclaimed "that the series of acts of the Thirty-second Congress, the act known as the Fugitive Slave Law included, are received and acquiesced in by the Whig party * * * as a settlement in principle and substance of the dangerous and exciting questions, which they embrace, and * * * will maintain them and insist upon their strict enforcement until time and experience shall demonstrate the necessity for further legislation * * * and we deprecate all further agitation of the question thus settled as dangerous to our peace and will discountenance all efforts to continue or renew such agitation, whenever or however the attempt may be made." McKee, 79, 80. The striking similarity in the language of these resolutions indicates a common origin, or that the Whig Convention had copied this part of its Platform from that adopted by the Democrats less than two weeks before in the same city—Baltimore."

[163] McKee, *Conventions & Platforms*, 84, 85.

"the year 1850 will be recurred to as a period filled with anxious apprehension. A successful war had just terminated. Peace brought with it a vast augmentation of territory. Disturbing questions arose bearing upon the domestic institutions of one portion of the Confederacy and involving the constitutional rights of the States. But notwithstanding the differences of opinion and sentiment which then existed in relation to details and specific provisions, the acquiescence of distinguished citizens, whose devotion to the Union can never be doubted, has given renewed vigor to our institutions and restored a sense of repose and security to the public mind throughout the Confederacy. That this repose is to suffer no shock during my official term, if I have power to avert it, those who placed me here may be assured."[164]

In the fall of 1848, Rufus P. Ranney, one of Ohio's lawyers, then a Democratic candidate for Congress, wrote as follows, in answer to a letter of Judge B. F. Hoffman, of Warren, asking him to define his position on the questions of the day:—

"I am in favor of maintaining the freedom of the territories of New Mexico and California in their whole extent, and UTTERLY OPPOSED *to authorizing slavery or involuntary servitude of any kind within them, or to any compromise, which shall doom any part of them to the curse of human bondage.* * * * It is conceded that these territories are now free. They must remain so until changed by positive law of the sovereign power. No question is better settled in this country than that slavery exists in a country by virtue of the local law. It is clear that it can no more exist in a territory without such law, than a man can breathe without air. Neither Congress *nor a territorial Legislature*, in my opinion, possess the power to establish it. It can only be done by the people *when admitted as a State* under the general principles of the Constitution. *I have no doubt of the power of Congress* to erect a Territorial Government, and *to provide for the prohibition of slavery within the territories*, AND I AM IN FAVOR OF AND WOULD SUPPORT SUCH PROHIBITION."[165]

The Cleveland Plaindealer, the leading Democratic paper in Northern Ohio, set forth the views

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[164] *Messages & Papers of the Presidents*, V., 222.

[165] *Western Reserve Chronicle*, Oct. 4, 1848 and Sept. 3, 1856. *Ohio State Journal*, July 8, 1859, *Mahoning Register*, July —, 1859.

of the Democratic party as to the Compromise Measures in the following language:—

"By the Constitution of the United States, (art 5 of amendments,) no person can be 'deprived of life, liberty or property, without due process of law.' Every person in this State is entitled to the protection of this provision, and there is a similar provision in our State Constitution.

" '*Due process of law*' is not a summary proceeding before a Commissioner appointed under an act of Congress. The judicial power under the United States Constitution is vested in one Supreme Court, and in such inferior Courts as Congress may establish. Commissioners cannot exercise judicial function over *life and liberty*. That is not 'due process of law.' If any person is arrested under this act, upon the warrant of any commissioners, he should be immediately taken before a State Judge upon *habeas corpus*, by whom some of the provisions of the act can be adjudicated to be unconstitutional. Congress cannot suspend the privilege of the writ of *habeas corpus*, except in cases of rebellion, or invasion. It is the right of every man to have this; and no judge can refuse to allow it, without the most severe penalty."[166]

" 'Out! d——d Spot!'

This quotation from Macbeth will apply with as much appropriateness to the late fugitive law, as it did in its original utterance to that black spot of guilt which the wicked murderer in the play could not wash out.

* * * *

"The institution of slavery is an anomaly in civilized governments, an exception to liberty everywhere, and a most outrageous contradiction to our pretensions as a Model Republic. It was barely sufferable in this country sixty years ago, and unfortunately recognized in one of the compromises of the Constitution. * * * But no framer of that Constitution, no indorser of its compromises ever dreamed that slavery would exist in this country at this day. Every act of Congress that has tended to support or perpetuate in the least this institution, has been in violation of the *intent* of the original framers of that instrument. This fugitive Slave Law is one of that character, and were its operations, like most other slave laws, confined to the slave States, it might escape repeal. But this is not the case; its operations are wholly in the *free States*, and to be executed, if executed

[166] *Cleveland Plaindealer*, October 23, 1850.

at all, by *free men*. The service it requires is not the kind we owe to either, God, man, or the devil."[167]

The annexation of Texas opened a new market and greatly increased the demand for slaves. An able bodied negro would bring from $1,000 to $1,500; able bodied women, from $800 to $1,200; and children from $200 to $1,000 according to age and condition.[168] Men who captured negroes in free territory and delivered them to claimants, true or false, in slave territory, were well paid—more if the claim was a false one than if it was true. The usual commission was one-half the value of the negro, or, if sold, one-half the price received. Man stealing was rendered by the Fugitive Slave Act easy of accomplishment and it was much more profitable and far less dangerous than horse stealing. The United States protected him against any interference on the part of anybody. This law was a direct incentive to crime and slave hunters were soon plying their trade in Ohio, as in other Northern States.

On March 20, 1851, the Legislature of Ohio adopted a "RESOLUTION Relative to the abduction of the children and grandchild of Peyton Polly," which illustrates the evil wrought by the Act:

"WHEREAS, it has been represented to this General Assembly, that on the night of the sixth of June last, seven of

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[167] *Cleveland Plaindealer*, October 30, 1850.

[168] The following item from the *Louisville Courier;* November 15, 1858, copied in the *Painesville Telegraph*, November 25, 1858, is illuminating:

"SALE OF FARM AND NEGROES—The farm of the late Isaac Owings, in Jefferson county, on Harrod's creek, about ten miles from the city, together with several negroes, a quantity of stock, etc., were sold at public sale on Thursday last by order of the administratrix. The farm, containing about 200 acres of good land sold at $60 per acre, Ralph Tarlton, Esq., being the purchaser. The stock, etc., generally, brought good prices. The negroes brought the following round sums:

1 boy aged 13	$1,310
1 boy aged 19	1,475
1 man aged 28	1,400
1 man aged 30	1,015
1 woman aged 32 with 3 children under 6 years	1,850
1 woman aged 37 with 3 children under 7 years	1,900

The slaves were sold on a credit of twelve months, and were, with one or two exceptions, we believe, bought by the heirs.—*Louisville Courier*, 15th."

the children and one grandchild of Peyton Polly, all said to be free colored persons, residing in Lawrence county, in this State, were forcibly seized and carried into Kentucky, and are there now held in slavery, contrary to law; and whereas, it is also represented that said Peyton Polly is poor, and unable to raise the pecuniary means necessary to procure counsel to test, in a court or law, the right of his said children and grandchildren to their liberty; Therefore,

"*Resolved*, * * * That the Governor be, and is hereby directed to inquire into the facts of said alleged seizure and abduction; and if on such inquiry, he shall become satisfied that said representations are probably true, that he shall employ counsel, and adopt such other measures as shall conduce most speedily to restore said persons to their liberty; and that the costs and expenses be paid from his contingent fund."[169]

A sequel to this interesting case is found in a "JOINT RESOLUTION Relative to the Kidnapping of the Polly Family," adopted by the Ohio Legislature, March 10, 1860:—

"WHEREAS, On the night of the 6th of June, 1850, seven of the children and one grandchild of Peyton Polly, all free persons of color, residing in Lawrence county, were forcibly seized with a view of reducing them to slavery, that four of them were arrested in the state of Kentucky on their way to a southern slave market, and after protracted litigation were declared free persons by the courts of that state, and returned to their homes; and whereas, four of said persons of color were sold into slavery in the county of Wayne, in the state of Virginia, and are now held in bondage there; and whereas, suit was instituted in the county of Cabell, in said state of Virginia, for the freedom of said last mentioned colored persons, and were delared free by the judgment of the circuit court of Cabell county, which judgment was afterwards reversed by the court of appeals, on the ground that the actual residence of the defendant was in Wayne county, and the Cabell county court had no jurisdiction of the cause; that said proceedings were removed to the county of Wayne, and are now pending; Therefore,

"*Be it resolved* * * *, That the governor be and he is hereby authorized to expend any sum not exceeding one thousand dollars for the purpose of defraying expenses of

[169] O. L., XLIX., 811-12.

said litigation; that the standing committee of finance be instructed to provide for the same in the general appropriation bill; and that the governor be requested to take such measures as he, in his judgment, may deem necessary for the speedy and successful termination of said proceedings."[170]

In the winter of 1849–50, the Ohio Senate adopted the following Joint Resolution by a vote 25 to 3 in the Senate, only two Democrats and one Whig voting in the negative:—

"*Resolved*, That the sentiment of the freemen of Ohio is, *No More Slave Territory*; that Congress has the power, and should apply the Ordinance of Congress of 1787, so far as it relates to slavery, to all the territories of the United States; that Congress has the power, and should immediately exercise it, and abolish slavery, and the slave trade in the District of Columbia, the coast-wise and inter-state slave trade; that the government of the United States should *cease to legislate for, and to promote slavery, but legislate for, and promote liberty*; and upon this subject there should be no compromise."

Among those voting for this resolution were Henry B. Payne, of Cleveland, afterwards Democratic Senator from Ohio, and Henry C. Whitman, of Cincinnati, afterwards Democratic candidate for Supreme Court Judge.[171]

In the session of the Ohio Legislature following the enactment of the Compromise Measures, Milton Sutliff, Senator from Warren, afterwards Supreme Court Judge, offered, December 11, 1850, a series of resolutions, among which were the following:

"*Resolved*, That among the powers delegated to the General Government, by the Constitution, that of legislating upon the subject of Fugitives from justice is not to be found; while that of depriving any person of life, liberty, or property, without due process of law, is expressly denied.

"*Resolved*, That in the judgment of this General Assembly the act of Congress in relation to Fugitives from service, approved Sept. 18th, 1850, is unconstitutional; not merely for want of power in Congress to legislate upon the subject,

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[170] O. L., LVII., 320-1.

[171] *Ohio State Journal*, June 1, 1859.

but because the provisions of the act are, in several important particulars, repugnant to the express provisions of the Constitution.

"*Resolved*, That it is the duty of the several courts of this State, to allow the writ of habeas corpus to all persons applying for the same in conformity with the laws of this State, and to conform in all respects in subsequent proceedings to the provisions of the same."

In the afternoon of the same day, they were taken up and two additional resolutions added, declaring the fugitive law "further objectionable, because of its inhumanity—its disregard of the natural and inalienable rights of man, and its hostility to the spirit of the age of progress in which we live," and instructing our Congressmen to use "their best endeavors for its immediate repeal." [172]

These resolutions were discussed at length in Committee of the Whole, and after various amendments were proposed, were adopted by both Houses, March 24, 1851, in the following form—Henry B. Payne and other good Democrats voting for them:—

"*Resolved*, * * * That while this General Assembly would urge the faithful observance of law upon all the people of this State, and of her sister States of the Union, as the most effectual mode of promoting their best interests, as well as a high duty they owe alike to themselves and their common country, would most earnestly recommend to Congress, the necessity of so amending and modifying the provisions of the 'Fugitive Slave Law,' that while it secures a faithful compliance with all the obligations imposed by the constitution of the United States, it will, as becomes a free government, guard with a zealous care the rights of the freeman. And if said law, in the opinion of Congress, cannot be so amended as to give to persons claimed as Fugitives from labor, the benefit of every legal defence of their liberty, we then recommend the repeal of said law.

"*Resolved*, That the law commonly called the 'Fugitive Law.' being a law that makes ex parte evidence conclusive of the master's right to recapture and return his slave; that denies a jury trial here or elsewhere; that provides for the appointment of swarms of petty officers to execute it;

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[172] *Ohio State Journal*, June 1, 1859.

> that gives a double compensation to find every claim set up in favor of the master; and pays the expenses in any case from the public treasury; ought never receive the voluntary co-operation of our people, and ought therefore to be immediately repealed."[173]

The Democrats had contrived, by their early acceptance of the "Compromise" and declaration against any renewal of slavery agitation, to secure credit for the promised rest from sectional strife, while casting upon the Whigs all the odium for its objectionable features.

In the fall election of 1853, the Ohio Democrats elected their candidate for Governor, William Medill, by a plurality of 61,806 over Nelson Barrere, the Whig candidate, and secured a large majority in both branches of the Legislature, which they utilized by electing George E. Pugh to the United States Senate to succeed Salmon P. Chase. Thousands of Whigs did not vote at all. Those who did, gave to Barrere only 85,857 votes, and to Samuel Lewis, Free Soiler, 50,346. Notwithstanding this overwhelming victory over a disheartened and divided enemy, the Democratic party of Ohio did not succeed in electing another Governor for twenty years.

At the next gubernatorial election in 1855, Governor Medill, renominated by the Democrats, was defeated by Salmon P. Chase, the candidate of the Republican party, which then made its first appearance in Ohio State politics. To appreciate the extent of this reversal one must add to Chase's plurality of 15,751 over Medill, 24,276 votes cast for Allen Trimble, the American (Know-nothing) candidate, making the total opposition majority 40,027.

In the Congressional elections of 1854 the Republicans had elected 108 members, and the Americans, 43, making an opposition majority in the House of 68.[174]

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[173] O. L., XLIX., 814.

[174] McKee, *Conventions and Platforms*, 86.

In the Presidential election of 1856, James Buchanan, Democratic candidate, polled 377,629 less votes than John C. Fremont, Republican, and Millard Fillmore, American.[175] Ohio gave Fremont 187,497, Fillmore 28,126, and Buchanan, only 170,874—a minority of 44,749. Buchanan was elected by a majority of 52 electoral votes, but the Democrats did not elect another President for twenty-eight years.

What caused this sudden and long continued loss of public favor?

The "Compromise Measures" had been approved —theoretically; but every attempt to enforce the Fugitive Slave law, with its harsh and unjust features, in any northern State, created indignation in the community where the attempt was made. The spectacle of a non-resident coming into a State and carrying off a colored resident of the State, without giving him any chance to prove his right to liberty before a court or jury in the place where he resided, without even giving him a chance to testify in his own behalf, was too much for the Anglo-Saxon love of fair play. Democratic administrations and all their officials were afflicted with, what is now termed, "defective psychology."

The things they did, with a view to awing the people into a strict observance of this law, simply exasperated them and led to determined opposition. When the Democratic mayor of Boston used three hundred armed police to escort the poor negro, Sims, from the office of U. S. Commissioner George Ticknor Curtis, to the Long Wharf and put him on a vessel bound for Savannah, and filled Faneuil Hall, that "Temple of Liberty," with State militia to assist the police, if necessary, in sending one negro back to slavery, natural inquiries arose in the minds of spectators. Is Massachusetts, then, a slave State?

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[175] McKee, *Conventions and Platforms*, 103.

Are all the resources of a city government, supported by taxes levied upon our property, to be placed at the disposal of any Southern planter who may choose to claim a negro residing in our midst? That night, bells were tolled in the churches of Boston and many of the neighboring cities. Public meetings were held in which the Fugitive Slave law was denounced in unmeasured terms and opposition to an administration and a party which would lend itself to such base uses grew with tremendous rapidity. Similar scenes were enacted, with similar results, in New York and Pennsylvania. In the latter state a United States marshal employed a force of United States Marines to secure the delivery of an alleged fugitive.

Most of the Ohio cases arising under the Fugitive Slave law of 1793 originated in Southern Ohio, and the Western Reserve was not vexed with seizures of alleged fugitives or suits against philanthropic individuals for hindering and obstructing such seizures, until February, 1845, when a man named Mitchell, claiming to have a power of attorney from one Driskell, appeared with Driskell's son at the house of Francis D. Parish, a prominent lawyer and much respected citizen of Sandusky, Ohio, and sought to take Jane Garretson, a colored woman working as a servant in Parish's house, and her five year old boy. Parish said that a power of attorney was not sufficient and that he must have some judicial authority before he would let them take Jane and her boy. All he wanted, was a fair trial in some court of the question of the claimant's ownership. On this, Mitchell and Driskell withdrew, and suit was brought against Parish "for hindering and obstructing the arrest of Jane Garretson, a colored woman, and her son, slaves of the plaintiff, and for harboring or concealing them."

On the first trial of the case at the July Term of the United States Circuit Court, before Mr. Justice McLean and a jury, the plaintiff was represented by

Henry Stanbery, the Attorney General of Ohio and afterwards Attorney General in President Johnson's Cabinet, and Mr. Parish was represented by Ebenezer Lane, ex-Judge of the Supreme Court of Ohio and Salmon P. Chase. Justice McLean charged the jury that the claimant or his agent might lawfully arrest fugitives for the purpose of taking them out of the State *without judicial sanction*—

> "according to the doctrine laid down by a majority of the judges in the case of *Prigg* v. *Commonwealth of Pennsylvania*, 16 Peters, 539. * * * It sweeps aside State laws and State sovereignty, and enables an individual who claims to act as agent to take any person, white or colored, as a fugitive from labor, without any exhibition of his personal authority, or of the claims of the master. * * * If he act without authority no person who 'hinders' the arrest incurs the penalty."[176]

And, on the second ground, the jury were instructed that:—

> "To harbor or conceal a fugitive from labor, within the meaning of the statute, it must be done with a view to elude the claim of the master. If a shelter be afforded to the fugitive for an hour, a day, or a week, when there is manifestly no design to conceal him from the pursuit of the master or his agent, or in any way to defeat the legal right of the master to his service, there is no violation of the statute."

The jury, after being out several hours, disagreed and were discharged.[177]

On a second trial before U. S. District Judge Leavitt and a jury at the November Term, 1849, Henry C. Noble was associated with Attorney General Stanbery, and Thomas Corwin and J. W. Andrews assisted Judge Lane. The Judge charged the jury that:—

> "it is clear that the penalty of the statute may be incurred, without a resort to violence, in hindering or obstructing an arrest. * * * If, after knowledge of the fact that a

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[176] Driskill v. Parrish, 3 McLean, 634-5.

[177] Ibid., 653-4.

person is a fugitive, a demand is made to arrest on the premises of another and refused, such refusal subjects the party to legal liability."[178]

In conclusion the judge said:—

"If the plaintiff has suffered a wrong, for which the law gives him redress, it is the plain duty of the court and jury to aid him in obtaining that redress. It cannot be disguised, that the subject of slavery is at this time a fruitful source of public agitation. Unfortunately, it has become a chief element of political excitement in our country. Whatever may be our individual views of this subject, it is clear, we shall best acquit ourselves of the responsibility now resting upon us, by taking care that the rights of the parties to this action are in no way affected by the existing state of public feeling, on the question of slavery. In Ohio, popular sentiment is no doubt strongly against that institution; and, there are few, if any, of her citizens who do not rejoice, that its admission into the State is precluded by a barrier, that may well be deemed insurmountable."[179]

The jury returned a verdict for the plaintiff on the count for "hindering and obstructing the arrest"—assessing the damages at $500, and for the defendant on the count "for concealing and harboring."

Numerous cases arose in central and southern Ohio, under the Fugitive Slave Act of 1850—among them that of the wholesale kidnapping of the Polly family in Lawrence county, heretofore noted.[180] Another which attracted much attention was that of the minor negro girl, Rosetta, who was taken from an agent of a Kentucky master under a writ of *habeas corpus* issued by a Franklin county judge and placed under the guardianship of a citizen of Columbus, and then taken from the custody of th egally appointed guardian, under a writ of *habeas corpus* issued by Justice McLean of the United States Supreme Court. This case was argued on behalf of Rosetta by ex-Senator Chase, ex-Judge

[178] Driskill v. Parrish, 5 McLean, 72-3. [179] Ibid., 75.

[180] *Supra*, pp. 104-5.

Timothy Walker and Rutherford B. Hayes, whom Chase described in a letter to J. T. Trowbridge as "a young lawyer of great promise," and who "acquitted himself with great distinction in the defense of Rosetta before Pendery," the U. S. Commissioner. The claimant was represented by Senator George E. Pugh, ex-Judge Flynn and a Mr. Wolf, of Louisville.[181]

Another case was that of the Garner family, besieged by slave-hunters in a cabin in Storrs township, Hamilton county. The mother, crazed at the prospect of her children being condemned to a life of slavery, seized a butcher knife and tried to kill them all—succeeding as to one. The survivors were arrested and taken to the Police Station and thence removed under a writ of *habeas corpus* issued by a county judge and placed in the custody of the Sheriff of Hamilton county. A few days later the parents were indicted for the murder of their child. Before trial, they were taken from the custody of the Sheriff under a writ of *habeas corpus* issued by United States Judge Leavitt. The various proceedings resulted in two persons, indicted for murder and in the hands of the proper State officer awaiting trial, being taken away from that officer and carried off to the State of Kentucky by agents of the alleged owner. The "property" of a slave-holder could not be punished for crime, and his rights were declared to be superior to all State laws and the rights of society.[182]

Another case grew out of the arrest, by deputy-Marshals and Kentuckians engaged in a slave-hunt in Champaign county, of four citizens of that county accused of hindering and obstructing them in their enterprise. The friends of the prisoners secured a

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[181] Warden, *Life of Chase*, 344-5. A very noticeable feature of all these caser is the high professional standing of the counsel engaged and the fact that poo ignorant negroes could command the services of such men.

[182] Warden, *Life of Chase*, 346 to 350 incl.

writ of *habeas corpus* and placed it in the hands of the Sheriff who undertook to serve it, but was beaten and shot at by the slave-hunters. Another writ of *habeas corpus* was sued out in Greene county and the Sheriff of this county, being forewarned, took with him a posse large enough to overcome the deputy-marshals and slave-hunters after a brief fight in which pistols were again used. The deputy-Marshals gave bail for their appearance and the slave-hunters were lodged in the Xenia jail. United States Judge Leavitt issued a writ of *habeas corpus*, brought the slave-hunters before him and discharged them. Senator George E. Pugh and Clement L. Vallandigham argued the case for the Kentuckians and the Attorney General of Ohio appeared for the Sheriff. Again it appeared that the Courts of Ohio could issue no writs which a wandering slave-hunter was bound to respect.[183]

Another hard case arose in Ross county, where a colored man named Lewis Early, a former slave of G. Kilgour of Cabell county, Va., brought free papers with him to Ohio and deposited them for safe keeping with J. Robinson, who gave him employment. In October, 1856, Robinson's house was burned and Early's papers were destroyed, which fact became known in the neighborhood. On March 25th, Early was seized by U. S. officials and hurried before U. S. Commissioner C. C. Browne at Cincinnati, who ordered him to be delivered to J. Kilgour, as son and agent of G. Kilgour, although Robinson testified as to the free papers and their loss by fire. Application for a writ of *habeas corpus* was made to Judge Leavitt, but before the papers could be made out, the claimant and his friends carried Early over into Kentucky and out of the jurisdiction of the Court.[184]

[183] Warden, Life of Chase, 350-1.

[184] *Cleveland Leader*, April 8, 1859. The *Leader* adds, "No person of reputed African descent' is safe for an hour so long as known man-stealers are tolerated on free soil."

He was sold in Louisville for $1,150, out of which Kilgour received only $425. The *Louisville Courier* said: "He will go to the South and exercise himself a while in the empire of King Cotton." [185]

The Ohio Legislature elected in the fall of 1856 made several efforts to at least mitigate the evils now apparent in the practical operation of the Fugitive Slave Law. They passed "AN ACT To prohibit the confinement of fugitives from slavery in the jails of Ohio," [186] "AN ACT To prevent Slaveholding and Kidnapping in Ohio," [187] and "AN ACT To prevent Kidnapping." [188] The second act was intended to cover cases like the Rosetta case, where a slave is brought into Ohio by an owner or his agent and held there indefinitely. In such a case, as the earlier decisions declared, the Constitutional provision for the reclamation of fugitive slaves and laws made in pursuance thereof did not apply. The third act provided:—

> "That no person or persons shall arrest and imprison, or kidnap, or forcibly or fraudulently carry off or decoy out of this State any free black or mulatto person, or attempt" [to do so].
>
> "That no person or persons shall kidnap or forcibly or fraudulently carry off or decoy out of this state any black or mulatto person * * * claimed as fugitives from service or labor, or shall attempt" [to do so] "without first taking such black or mulatto person or persons before the Court, judge or commisioner of the proper circuit, district or county having jurisdiction, according to the laws of the United States * * * and there, * * * establishing by proof his or her property in such person."
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> "That any person or persons offending against the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof * * * shall be confined in the penitentiary at hard labor for any space of time not less than three years nor more than eight years at the discretion of the court and moreover be liable for all costs of prosecution."

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[185] *Cleveland Leader*, April 13, 1859.
[186] O. L., LIV., 170. [187] Ibid., 186. [188] Ibid., 221-2.

This Legislature also passed a series of joint resolutions, one calling for a re-formation of the Supreme Court of the United States, of which a majority of the Judges were then appointees from slave-holding States, and requesting our Senators and Representatives in Congress:—

> "to use their influence and votes to procure the adoption of such amendments of the laws organizing the federal judiciary, as will give to the several States of the Union that just proportion of the judges of the Supreme Court to which they are entitled by population and business and the equality of weight in the several departments of the government of right belonging to the people of these States."[189]

Another, "Relative to Slavery and the Extension thereof," declaring:—

> "That the people of Ohio now, as they always have done, look upon the institution of slavery as an evil unfavorable to the full development of the spirit and practical benefits of free institutions; and that entertaining these sentiments they will feel it their duty to use all their power consistent with the national compact to prevent the increase, to mitigate, and finally to eradicate the evil."[190]
>
> "That the provisions of the ordinance of Congress of 1787, so far as the same relates to slavery, should be extended to all territory of the United States not yet organized into States.
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> "That our Senators and representatives in Congress are hereby requested to vote against the admission of any State in the Union, unless slavery or involuntary servitude, except for crime, be excluded in the constitution thereof."[191]

Another, "Relative to the decision in the Dred Scott case; declaring:—

> "1st. That this general assembly has observed with regret, that, in the opinion lately pronounced by Chief Justice Taney * * * in the case of Dred Scott against J. H. Sanford occasion has been taken to promulgate extra judicially certain doctrines concerning slavery, not less con-

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[189] O. L., LIV., 297.

[190] This will be recognized as one of the planks in the Democratic platform adopted in 1848-1850, 1852, 1853 and 1855.

[191] O. L., LIV., 298.

tradictory to well known facts of history, than repugnant to the plain provisions of the constitution and subversive of the rights of freemen and free States.

"2d. That in the judgment of this general assembly, every free person, born within the limits of any State of this Union, is a citizen thereof and to deny any such person the right of sueing in the courts of the United States, in those cases where that right is guaranteed by the constitution to all citizens of the United States, is a palpable and unwarranted violation of that sacred instrument.

"3d. That the doctrine announced by the chief justice * * * that the federal constitution regards slaves as mere property, and protects the claims of masters to slaves, to the same extent, and in the same manner as the rights of owners in property, foreshadows, if it does not include the doctrine that masters may hold slaves as property within the limits of free States, during temporary visits, or for purposes of transit, to the practical consequences of which doctrine no free State can submit with honor.

"4th. That the doctrine also announced in behalf of a majority of the court that there exists no power in the general government to exclude slavery from the territories of the United States subverts the spirit of the constitution, annuls the just authority of the people of the United States over their own territories, and contradicts the uniform practice of the government.

"5th. That the general assembly, in behalf of the people of Ohio, hereby solemnly protest against these doctrines, as destructive of personal liberty, of State's rights, of constitutional obligations and of the Union; and, so protesting, further declares its unalterable convictions that * * * the fathers of the republic * * * in the constitution, by the comprehensive guaranty that no person shall be deprived of life, liberty, or property, without due process of law, designed to secure these rights against all invasion by the federal government, and to make the establishment of slavery outside of slave States a constitutional impossibility."[192]

These last resolutions command careful perusal by a lawyer-like precision and clarity of statement and a regard for fundamental principles quite exceptional in legislative fulminations. They did not carry the weight and have the influence on public

[192] O. L., LIV., 301.

opinion which they deserved; because, in the fall election, which was held less than six months after their adoption and before they were printed and in general circulation, the Administration Democrats gained a majority in both branches of the legislature and proceeded to undo the work of the preceding legislature.

The reversal was not due to any change in the sentiments of a majority of the people, but to the apathy, commonly observed in the year following an exciting Presidential campaign, and to the tendency of reformers to regard their work as complete when they have once succeeded in incorporating their views in public laws and resolutions. They pat themselves on the back and go to sleep while men stimulated by self interest and political ambition return to the charge and annul all the disinterested reformers have accomplished.

The new Democratic Legislature promptly repealed the act prohibiting the confinement of fugitives from slavery in the jails of Ohio, and the act to prevent slaveholding and kidnapping in Ohio. This was notice to all slave-hunters that the Ohio field was again open for the pursuit of negroes and that no obstacles would be placed in their way. The fact that the third Act above mentioned, relating to kidnapping only, had not been repealed, seems to have escaped general observation.

THE OBERLIN—WELLINGTON RESCUE CASES.

As might have been expected, there was renewed activity during the summer of 1858 in the profitable business of capturing negroes, hustling them out of the State, selling them for the $1,000 to $1,500 which each would bring, and dividing the proceeds. There was no way in which a brutal man, with little education, could make so much money as in slave

hunting or man stealing, and the "law" had, now, no terrors to restrain him.[193] After the case of *Driskell v. Parish*,[194] the Western Reserve had not experienced the rigors of the Fugitive Slave Laws, of either 1793 or 1850, and there was an unusual influx of colored immigrants from other sections of the State, as well as from the South, who believed that, there, they would be comparatively immune from capture, or annoyance. In the decade 1850 to 1860, there had been a 45% increase in the colored population of Ohio; and in two counties of the Western Reserve the increase had been more than 100 per cent. According to the census of 1860, there were 894 blacks in Cuyahoga county, most of whom were concentrated in the city of Cleveland where concealment was easy and where it was easy to get away on a Lake vessel in case of a raid by slave-catchers. There were 549 blacks in Lorain county, a large percentage of whom were settled in and about Oberlin on account of its educational advantages and philanthropic spirit.[195] The Cleveland, and various county newspapers boasted of the immunity of colored residents from capture and reported with defiant satisfaction the passage through the Reserve to such Lake ports as Conneaut, Ashtabula, Fair-

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[193] *Portage County Democrat*, Sept. 29, 1858, said, "Our National Government is an engine of oppression—James Buchanan is the head slave-catcher. His subordinate co-workers, the agents of the Fugitive Slave Law, are remarkably active in Ohio, the present season." *The Guernsey Times*, Dec. 23, 1858., said, "Ohio has become the arena for slave hunts." See also, *Ashtabula Sentinel*, Aug. 12, 1858, and *Painesville Telegraph*, Sept. 9, 1858.

[194] *Supra*, pp. 110 to 112 incl.

[195] *The Cleveland Leader* said, September 10, 1858, "It is now ten years since any attempt has been made to get possession of fugitives from service in Oberlin. The effort then failed. From that time the few fugitives settled there have dwelt in comparative peace and safety. They have made themselves pleasant homes, accumulated property, improved their minds and educated their children, and have, in all respects, been good citizens;" and again, April 19, 1859, "During the Marshalship of Mr. Jones and Mr. Fitch, the latter the immediate predecessor of Marshal Johnson, not a fugitive was seized in Northern Ohio." and again April 30, 1859, "During the whole of President Pierce's and the half of Mr. Buchanan's Administration no efforts were made in these parts, in a business so odious to the people, and so disreputable to the actors therein."

port, Cleveland, Lorain, Huron and Sandusky, of colored travelers on the safe and well equipped "Underground Railroad."[196]

In the summer of 1858, one Anderson Jennings, of Maysville, Ky., made his third trip to Ohio in search of "likely" negroes, who either had been, or would make, useful slaves. He visited Cleveland, Sandusky, Elyria, and Painesville, Ohio, but did not stay long in either place. He had with him on his visits to Sandusky, Elyria, and Painesville, United States Deputy Marshal A. P. Dayton, of the Northern District of Ohio, who was then a resident of Oberlin. Their errand in Painesville being suspected, they were questioned and warned to leave the place in twenty minutes and they left.[197] Dayton

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[196] The Portage County Democrat, August 4, 1858, said:
"UNDERGROUND R. R.—Some little interest was awakened in Salem, Columbiana County, last week by the appearance of a Virginia slaveholder in that town, in search of a peculiar kind of property recognized in that State [a colored woman, wife of a free-born native of Ohio] * * * Some of the enterprising officers of the U. G. R. R. took the matter in charge and passed the young woman over the road to the dominions of Queen Victoria. The young husband tarried a day or two and passed through this place on Conductor Swayne's train on Monday, to join his wife in a land where slave-drivers, slaveholders' laws and United States Marshals cannot interrupt the peace or infringe upon the rights of free citizens." The *Cleveland Leader* said, Aug. 21, 1858, "U.G.R.R.—We are informed by one who is in the secret that no less than seven slaves, three men and their wives and one child, all the way from Maryland, passed through this city day before yesterday on their way to the Canadas, where they are by this time safely landed."
The Painesville Telegraph said, August 26, 1858:—
"The U. G. R. R.—The travel on this line is constant and increasing. Last Monday night some six or seven thousand dollars worth of passengers passed over on the underground track not a thousand miles from these parts." *The Medina Gazette* said, Sept., 1858, "Last Friday night three fugitives from slavery, Kentucky, a man and two women, arrived in this town on their way to Canada They were very intelligent. Had been about four weeks on the road. * * * Quite a sum of money was raised here for their relief, and they left Saturday morning rejoicing." *The Conneaut Reporter*, January—, 1859, said, "ANOTHER PASSENGER—A 'likely' thousand dollar nigger from Maysville, Ky., passed through here last Saturday evening, toward the North Star. Several of our citizens endangered the perpetuity of the Union to aid his escape." See also *Ashtabula Sentinel*, Aug. 12, Aug. 26, and Sept. 3, 1858, and Jan. 6 and Jan. 27, 1859; *Portage County Democrat*, Aug. 18 and 25, 1858; and *Cleveland Herald*, Aug. 21 and 23, 1858.

[197] *Painesville Telegraph*, Sept. 9, 1858; *Western Reserve Chronicle*, Sept. 8, 1858; *Cleveland Leader*, Sept. 3, 1858. Jennings himself testified in open court about this visit. He said: "Heard my boy Henry was at Elyria; got there, and heard he had gone to Painesville. Went there and found a worse place than Oberlin.

took up his residence in Oberlin just after his appointment as Deputy. He soon became *persona non grata*, as he was suspected of espionage on the colored population and being in close touch with would-be captors. He was implicated in an unsuccessful attempt to capture the Wagoner family about the middle of August, 1858, was recognized and driven off by Wagoner, carrying a shot-gun in his hand and shouting to rouse the neighborhood. On Friday night, August 20, 1858, an attempt was made by four men, Dayton among them, to seize and carry off a negro woman and her children. The shrieks of the woman aroused the neighborhood and there was such a rapid gathering of the citizens that the kidnappers abandoned their prey and disappeared. On Monday night of Commencement week, August 23, 1858, just as President Hitchcock of Western Reserve College had closed his address to the College societies, the attempt was renewed. The fire-bell was rung and the students rushed to the scene of action and again the would-be captors hurried off without their prey. If Dayton had a warrant for the arrest of these persons, he chose a very sneaking and suspicious way of executing it. A mulatto stone-cutter, James Smith, was advised by a correspondent in North Carolina that he had better look out, for Dayton had written to parties there describing him and offering to arrest him if they would send him a power of attorney. Smith met Dayton a few days after getting this letter, accused him of treachery and chased him into the Palmer House, striking him with a hickory cane.[198]

Never see so many niggers and abolitionists in any one place in my life! Dayton was with me. They give us twenty minutes to leave, and then wouldn't allow us that! There was a crowd of fifty or sixty, armed. Might as well try to hunt the *devil* there as to hunt a nigger. Was glad to get away as fast as I could. Kept very close at Oberlin. Didn't tell my business to many. Dayton and Warren were at my room."

[198] *Cleveland Leader*, Sept. 10 and 21; and Dec. 14, 1858; *Sandusky Register*, August —, 1858; *Cleveland Herald*, Aug. 28, 1858; *Jeffersonian Democrat*, Chardon,

It may not be out of place for the writer to record, here, some personal recollections of a visit made to Oberlin in August, 1858. One day as he was walking by Wack's Hotel on South Main Street with a cousin, he saw two or three rough looking men sitting on the porch, who were pointed out as "slave-catchers." It was impressed upon him that "slave-catchers" were the most depraved of human beings—worse than thieves, burglars or murderers —and he gave Wack's Hotel a wide berth after that, not only on this visit, but on one he made three years later. I attended some of the Commencement exercises and remember particularly speeches by John C. Hutchins, afterwards a prominent lawyer and judge in Cleveland, and William D. Scrimegeour, a fiery Scotchman, who used plain Anglo-Saxon language and some striking similes. He brought down the house by saying, in regard to slavery, "The day for soft speeches is past. The time for action has come. You'd as well try to knock down this meeting house" (which still stands) "with a *pancake* as to destroy slavery by a string of resolutions."

I spent the latter part of August at the home of my aunt Elizabeth Cochran, wife of Stephen W. Cole, about 2 miles northeast of Oberlin. My uncle seemed to have a good deal of business with a colored blacksmith, named Augustus Chambers, whose smithy was about a quarter of a mile east of Mr. Cole's house. He took me along on three occasions, once when he had a horse to be shod, once when he had a wagon-tire to be reset, and once when he seemed to have nothing in particular to do,

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Sept. 3 and 17, 1858; *Norwalk Reflector*, Sept. 21, 1858; *The Oberlin Evangelist*, Sept. 29, 1858, said: "Our community has been excited at various times during a few weeks past by attempts to capture fugitives in this place. These efforts have been made, as we understand, by men from Kentucky. * * * It is not necessary to say that these efforts have stirred up intense feeling on the part of our citizens. * * * In these undertakings there was no approach to success until stratagem and treachery were resorted to."

but talked to Chambers in a low tone of voice. Chambers became highly excited. He brought his hammer down on his anvil with a mighty crash, then threw it in the corner. He paced about his smithy, gesticulating violently and talking in a loud voice, which was still musical and pleasing, and his eyes flashed fire. "So they tried to steal that mammy and her children right under your noses! So they rang the firebells and got out the fire company and the hooks and ladders to stop it, did they? Well! how long are you going to let these man-stealers lie around Oberlin? I don't call them *slave-catchers;* there are mighty few *slaves* around here. I call them *man-stealers*—devilish thieves!"

My uncle tried to quiet him and suggested that he should go into hiding for a few days. There was a swamp and dense forest in those days (since drained and cleared) which stretched from a point not far from Chambers' smithy nearly to Elyria and, while I did not understand it clearly at the time, I became convinced, later, that many negroes were in hiding in that swamp and that Chambers was in close communication with them, and that, through Chambers, my uncle was extending aid to the poor refugees. "No, Sir!" thundered Chambers, "*I stay right here.* And if any one of those men darkens my door, he is a dead man." He then showed my uncle how impossible it was for him to be taken unawares, how he had a hammer here and a bar of iron there, and a sharpened poker lying in the forge red hot most of the time. He took us into a lean-to in the rear and showed us a double-barrel shot gun "loaded with buck" over the door, and knives and a pistol hung on the siding near his bed. "But, Chambers!" said my uncle, "you wouldn't kill a man, would you?" "Kill a *man*? No. But kill a *man-stealer*? Yes! Quicker'n a dog. As God is my judge, the man who tries to take my life will lose his *own.*" My uncle looked at me and then said to Chambers, "Sh-h-h,

little pitchers have big ears." Chambers said, "I don't care how big his ears are, or his mouth. I don't care who hears, or how many he tells. Chambers will never be taken alive." "But," my uncle said, "we all know you are a freeman and have your *papers*, so that any court or judge will clear you—even if they do take you."

"I will never trust them. A man with a drop of colored blood in his veins has no show. Any white man who wants to make a few hundred dollars can swear away my rights. They will not let *me* say a word. My papers are all right, but how can I hold on to them or prove they are 'jinuine.' These men-stealers are just lying around Oberlin until they can spot a likely negro, get his description down pat—size, marks and all—then get some fellow down South to claim him and give them his affidavy and then they will sail in and take him. An average negro in good condition is worth $1,000. On account of my blacksmithing, I s'pose I would be worth $2,000 on a big plantation, and if this thing goes on much longer they will try to get me."

His voice was tremulous with emotion and a sense of wrong.

"But we will testify for you," my uncle said. "Think they are going to have me tried here?" Chambers said. "They will take me way off somewheres where you-uns can't come and more'n likely they won't try me at all. They'll slip me over the Ohio river if they can and say nothing to nobody. If they do try to prove up it will be in the back office of some Commissioner appointed by a Democratic judge, with no one present, but the men who get me, who say their say, and I am not allowed to say anything. For fear, even then, that a C'missioner might let me off, the law says to him—send him down South and you get $10—set him free and you only get $5. And that isn't all. When you pick up a negro worth $1,000 or $2,000, there is *money to*

divide among all concerned. There is *nothing coming* to anybody if you set him free."

I think his words would have made a lasting impression on my mind anyway; but the capture of John Price, a fortnight later, by the very men he was talking about, the subsequent indictment and trial of Price's rescuers, and the excited talk I heard in Warren, Ohio, to which I returned soon after the first of September, 1858, made them indelible. And I never heard any one state the objections to the Fugitive Slave Law more clearly and more eloquently than this colored man, who "had no rights that a white man was bound to respect."

It was a significant thing that when Jennings came to Northern Ohio, looking for slaves of his own and, incidentally, for slaves belonging to others, he should go right to Dayton, at Oberlin, and keep in touch with him until he had accomplished the object of his visit. The following account is condensed from the sworn testimony of witnesses given at two trials in the United States District Court at Cleveland, during the months of April and May, 1859, as reported daily in the *Cleveland Leader* and *Cleveland Herald.*

Jennings arrived in Oberlin late in August, 1858, and went to Wack's hotel, which he made the base for operations. Dayton and a man named Warren met him at the hotel. He himself kept out of sight most of the time while they scouted around and made inquiries for him. It was on clues furnished by them that he visited the places above mentioned, ostensibly looking for a run-away slave of his own. He did not find him, but he wrote to John G. Bacon of Maysville, Ky., that he had "discovered a nigger near Oberlin answering to the description of his run-away slave, John, and that if he would send him a power of attorney he would get him. He then went to Sandusky and from there went to his home near Maysville to urge Bacon to

give him the power of attorney. This follow-up move seems to have been inspired by the knowledge, gained before he wrote, that a man named McMillen already had a power from Bacon to take John. He must have learned this from Dayton, with whom McMillen had been working before Jennings came.[199] Bacon told Jennings that he had executed a power of attorney and given it to Richard P. Mitchell.[199a] to take to him at Oberlin, and that he must have passed Mitchell, on the Ohio river. The power of attorney was not Bacon's only, and did not apply to "John" alone. Richard Loyd joined in it and it described his negro "Frank." It was dated September 4, 1858. Jennings hurried back to Oberlin and met Mitchell who had been waiting there for him two days. Mitchell gave him the power of attorney and said he had seen "John" and he was the boy wanted. Jennings said, to make things doubly sure, he would get a warrant from a United States Commissioner and a United States Deputy Marshal to execute it. Oberlin is in the Northern District of Ohio and less than 35 miles from Cleveland, where there was a United States Judge, a United States Marshal, and a United States Commissioner. Cleveland was the natural and proper place to apply for a warrant and the Cleveland Marshal, or one of his deputies, was the proper person to make the arrest. A Cleveland judge, or U. S. Commissioner, was the proper person to hear and decide whether John Price was Bacon's slave, and whether he was a "fugitive from labor" within the meaning of the Fugitive Slave Law. The warrant could have been

[199] When quizzed about this apparent breach of confidence, on the second of the trials above mentioned, Jennings made a characteristic explanation. "McMillen had a power of attorney to take John when I wrote for one. Don't know whether Bacon knew he had one or not. S'pose McMillen went and got it for his own use, *without Bacon's* knowledge!" This interesting letter was conveniently missing at the trial.

[199a] Richard P. Mitchell may well be termed a professional slave-catcher. He figured in the Sandusky case of *Driskill v Parrish*, supra, pp. 110 to 112. He had twice before visited Ohio in search for the Maysville runaways.

procured and the arrest made within a day. John's friends and neighbors could have attended the hearing without great inconvenience and satisfied themselves that he had a fair trial. Jennings knew all this and had been in constant communication with Dayton, to whom the warrant would naturally have been delivered for execution. But Jennings did not go to Cleveland. He went to Columbus, which is in the Southern District of Ohio, and hunted up Jacob K. Lowe, a U. S. Deputy Marshal for the Southern District of Ohio, and the two went before Sterne Chittenden, a U. S. Commissioner for the Southern District of Ohio, who issued a warrant to any deputy-Marshal of that District for the arrest of—not John Price of Oberlin but—"John, a fugitive and person escaped from service by him owed to John G. Bacon" and commanding him to forthwith "have his body before some United States Commissioner, *within and for the Southern District of Ohio.*"

The warrant was handed to Lowe, and Jennings returned to Oberlin with Lowe and Davis, the latter a jailer and deputy sheriff of Franklin county—arriving there late Friday night, September 10, 1858. Jennings, Mitchell, Lowe and Davis had a conference with Dayton and Warren at Wack's hotel. Both Dayton and Warren said that it would be dangerous to attempt to arrest John Price in Oberlin; that some scheme must be contrived for getting him out of town so that he could be seized and carried off without raising a disturbance. To Jennings' question, "if he knowed of any one a man could put confidence in," old Mr. Warren told him he could trust Lewis D. Boynton, who lived about two and a half miles north of Oberlin. Jennings and Lowe went to Boynton's house Saturday night and stayed there until late Sunday night. They fared better than they would have fared at the hotel, and before coming away, arranged with Boynton's

son, Shakespeare, to drive into town and get John Price to go out with him to dig potatoes, and, if he consented, to let them know so that they could follow and arrest him. John was not anxious to work, himself, but offered to go with Shakespeare and hunt up "a nigger down at New Oberlin that he thought would go and dig potatoes." This was reported and Shakespeare took John in his carriage and drove slowly eastward until about two miles from Oberlin, when Lowe, Mitchell and Davis in a two-seated carriage overtook them and transferred John to their own carriage and started for Wellington by a diagonal road from Elyria which passed to the east of Oberlin and struck the road from that place to Wellington about two miles south of Oberlin. The seizure was effected without any outcry or disturbance. Shakespeare returned to Wack's tavern—not the "Mermaid"—reported the capture to Anderson Jennings, the leader in the enterprise, and received $20 for his morning's work—not too much, considering that Jennings was to receive $500 for delivering the negro to the claimant in Maysville, Kentucky.

Jennings then started for Wellington to join the captors. Two young men, driving from Pittsfield to Oberlin, met the three men with the negro, John, and, later, Jennings. They knew at once what it meant, and, hurrying to Oberlin, spread the news that the "Southerners" had caught John Price and were carrying him off to Wellington—nine miles away—with the evident intention of taking the train South which went through about 5 o'clock. There was great excitement and in a short time numbers of students and towns-people started for Wellington in buggies, spring wagons, hay wagons and any old rig they could get. Some of these were borrowed for the occasion, without the formality of consulting the owners. The speed limit, as fixed by custom, was exceeded by almost every

outfit. One man said he made the distance in three quarters of an hour, another testified that his party made it in 40 minutes. Simeon Bushnell, who started late, because he wanted "a good rig and a man with a gun," passed nearly everybody on the road. As no tickets were sold, it is impossible to tell how many went down to Wellington on this excursion, but there were some 50 or 60 in all. They had no organization and no leader. Many went from mere curiosity and Mr. Wack went to get Jennings to give him a good ten dollar bill for one which Jennings had paid him, and which the bank said was counterfeit. There were perhaps 20 guns in the crowd, very few of which were loaded. The first thought of those who were in earnest was, they must prevent the kidnappers—for that is what all believed the Southerners to be—from taking the afternoon train South, and so they surrounded the Wadsworth House,[200] the hotel to which the captors had taken John, and blocked the doors and every avenue of escape. It was doubtful even then if they could have effected their purpose, except for a fortuitous circumstance which added greatly to their apparent numbers. A building in Wellington near the hotel took fire that morning and rumor spread by telegraph and otherwise that the town was burning up. People came in from Grafton, La Grange, Rochester and New London, on the railroad, and from the surrounding country in buggies to see the fire, and when the fire was out, joined the crowd around the hotel, hoping to see something exciting.[201] The crowd, thus reinforced, varied from 150 to 300 in number. Knowing nothing of the composition and motives of this crowd, the captors thought they

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[200] This hotel was a frame building of two stories and an attic, facing the public square on the site now occupied by the Library which ex-Governor Herrick presented to his native town. It had a two-story porch in front.

[201] *Cleveland Leader*, Sept. 13, 1858; *Independent Democrat*, Elyria, Sept. 15, 1858; *Lorain County Eagle*, Sept. 15, 1858.

were all after John Price, and were thoroughly overawed. They backed up stairs to the second story and when a ladder was put up outside and people began climbing to the second story porch, they backed up to the attic, and retired to a room which had a small fan-shaped window and one door with a rope fastening. Jennings was a Kentucky giant, about 6 feet 4 inches high, and with proportions to correspond. Mitchell was another big Kentuckian. Lowe and Davis were used to handling prisoners, and all were armed with revolvers—the Kentuckians carrying two apiece and knives in addition.

Before retiring to the last ditch, *i. e.*, the attic of the Wadsworth House, John's captors parleyed with the crowd, invited them to appoint a committee to inspect the papers and report on the regularity of their action. The "papers" were in fact exhibited to several persons, among them the Democratic Postmaster of Rochester, who had come up to see the fire, a Democratic lawyer, of Wellington, a Justice of the Peace at Wellington, and two or three students. The paper relied on was the warrant issued by U. S. Commissioner Chittenden and this was the only paper exhibited to most of the witnesses. The Justice said it was defective because it had no seal and because it was not issued by an officer of "*the proper district*;" but disclaimed any jurisdiction in the case and said they would have to go to Elyria—18 miles away, and sue out a writ of *habeas corpus*. Jennings offered to let a committee accompany him to Columbus and said if he failed to make out a case they might bring the negro back with them. The crowd hooted at this and said "Columbus was a little too far South." The fact that the warrant was issued by an official in the Southern District of Ohio and was being executed by officials from that district who intended to take John there before any inquiry was made, was a suspicious circumstance which confirmed the impression that it was a case

of kidnapping. If there had been any provision for a trial by a jury in Lorain County, or by a U. S. official in Cleveland, and they were taking John there, there would have been no attempt at rescue.

The train came in and went on, minus its intended passengers; it began to grow dark, and at last the cry went up, "We must get him out of there." "Get him out!"

Richard Winsor, a little Englishman, of rather dark complexion, had gone up with a citizens' committee to examine the "papers" and decided to stay when the rest retired. Jennings was busy keeping the door closed against the crowd outside, and the others, noting the insignificant appearance of Winsor, paid little attention to what he was doing. He took John off to one side, tried to put heart into him and instructed him just what to do when the door was opened. Then he wrote instructions on a slip of paper and passed them through a pipe hole in the wall to students whom he heard in the adjoining room.

His instructions were to ask for another conference, get the door open in some way, and then all crowd in and, in the confusion, he and John would edge around and get out. This communication having been delivered, some one from the adjoining room managed to punch Jennings' head through the pipe hole and, as he let go the rope fastening, they forced the door open and entered the room, and as they crowded in, Winsor worked his way out, the colored boy stooping down behind him and clasping him tightly around the waist. He was hurried down stairs and thrown into the spring wagon, in which Simeon Bushnell was waiting, and driven to Oberlin. Not a shot was fired, nor a blow struck, except the slight punch to Jennings' head. [202]

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[202] Winsor himself gives an account of the rescue in *Oberlin Jubilee* 1883, pp. 251 to 255.

The thing was managed so cleverly that not one of the captors was able to tell just how John disappeared from the attic, and no one in the crowd identified Winsor. Several persons testified that Bushnell drove off with John and *another negro.*

The facts about this part of the rescue and the further fact that John was stored for 24 hours in the attic of Professor James H. Fairchild's[203] house were not known to more than three or four persons until 25 years later. Professor Fairchild's attic was chosen, much against his will, because he was about the last man in town who would be suspected of violating any law, no matter how bad the law might be. The next day, after dark, John was taken to the black swamp, made his way from there to a Lake port, crossed to Canada, and Oberlin saw him no more.

While this rescue created great excitement in Oberlin and Wellington, it would have attracted little attention outside of those places except for what followed. The *Cleveland Herald,* Sept. 14, 1858, had a brief paragraph concerning it.[204] The *Cleveland Leader,* Sept. 13, 1858, mentioned the fire, which burned out part of the business street of Wellington on the morning of the rescue, but said not a word about the rescue itself until eight days later.[205] The *Independent Democrat,* and *Lorain County Eagle* (Dem.) of Elyria, September 15, 1858, gave brief accounts of it, the latter concluding with the following:—"We have heard of many foolish things being attempted in this world, but to think of carrying off a fugitive from Lorain County seems to us to cap the climax in the line of folly," The *Painesville Telegraph,* Sept. 16, 1858, published a

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[203] James H. Fairchild was at this time Professor of Theology and Moral Philosophy. He was elected President of the college in 1866.

[204] This paragraph, still further condensed, appeared in the *Ashtabula Telegraph,* Sept. 18, 1858; and *Norwalk Reflector,* Sept. 21, 1858.

[205] *Cleveland Leader,* Sept. 21, 1858; *Western Reserve Chronicle,* Sept. 22, 1858.

brief item furnished by Ralph Plumb. The *Jeffersonian Democrat*, Chardon, Sept. 17, 1858, contained a rather detailed account of it written by an Oberlin student from Geauga County. Other Western Reserve papers do not appear to have heard of it, until the United States District Attorney at Cleveland brought it into prominence by proceedings to indict the participants.[206]

The Cleveland papers, of November 9, 10 and 11, mentioned the empanneling of a Grand Jury and Judge Hiram V. Willson's charge to the Grand Jury[207]. The Western Reserve papers generally noted this move on the part of the United States authorities.[208] If the proposed indictments had been confined to those who took an active part in the rescue, such as Bushnell, Winsor, and the few men with guns who surrounded the hotel in Wellington, there would have been little public comment, but the Plain Dealer's announcement that "some forty citizens of Oberlin and Wellington will be indicted" indicated a purpose to do something more than punish active offenders against the law. Judge Willson was not content to declare the law, in his charge to the Grand Jury, and explain what would and what would not, constitute a violation of its provisions, but lowered the dignity of the Court and betrayed the animus of the whole proceeding by an

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[206] The *Cleveland Plaindealer* said, Sept. 24, 1858: "We understand that those citizens of Oberlin and Wellington who assisted in rescuing a fugitive slave from the U. S. officers a short time since, are to be immediately prosecuted. See also *Lorain County Eagle*, Oct. 13, 1858.

[207] The *Cleveland Plain Dealer* said, Nov. 9, 1858: "The witnesses subpoenaed are all in this city, some twelve in number, and will shortly be examined by the Grand Jury of the United States Court, now in session. Oberlin is in a foam. It is thought some forty citizens of Oberlin and Wellington will be indicted for aiding fugutive slaves." which shows that the District Attorney had taken the *Plain Dealer* into his confidence. The *Cleveland Herald*, said, Nov. 10, 1858: "In the course of his charge he alluded to the recent rescue case at Wellington, impressing the necessity of sustaining the provisions of the Fugitive Slave Law."

[208] See *Independent Democrat*, Elyria, Nov. 17, Dec. 8, and Dec. 15, 1858; *Ashtabula Sentinel*, Dec. 16; *Guernsey Times*, Dec. 23, 1858; *Jeffersonian Democrat*, Chardon, Dec. 10, 1858; *Norwalk Reflector*, Dec. 14, 1858; *Oberlin Evangelist*, Dec. 22, 1858; *Painesville Telegraph*, Nov. 11, 1858; *Portage County Democrat*, Dec. 15 and 29, 1858.

intemperate assault upon the character and motives of conscientious objectors to that law, although he had to admit later in the charge that "The Fugitive Slave Law may, and unquestionably does, contain provisions repugnant to the moral sense of many good and conscientious people." He said:—

> "There are some who oppose the execution of this law from a *declared* sense of conscientious duty. There is, in fact, a sentiment prevalent in the community which arrogates to human conduct a standard of right above, and independent of, human laws; and it makes the CONSCIENCE of each individual in society the TEST of his own ACCOUNTABILITY to the laws of the land.
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> "While those who cherish this dogma claim and enjoy the protection of the law for their own lives and property, they are unwilling that the law should be operative for the protection of the constitutional rights of others. It is a sentiment semi-religious in its development, and is almost invariably characterized by intolerance and bigotry. The LEADERS of those who acknowledge its obligations and advocate its sanctity are like the subtle prelates of the dark ages. They are versed in all they consider useful and sanctified learning—trained in certain schools in New England to manage words, they are equally successful in the social circle to manage hearts; seldom superstitious themselves, yet skilled in practising upon the superstition and credulity of others—FALSE, as it is natural a man should be whose dogmas impose upon all, who are not saints according to HIS CREED, the necessity of being hypocrites."

The presumption of impartiality in the proceedings of the Grand Jury was negatived by the fact that one of the number was Lewis D. Boynton, the "reliable citizen" at whose house the plot for capturing John Price was arranged and whose son, Shakespeare, was one of the principal witnesses for the prosecution. It was also announced that he had been appointed Postmaster at Oberlin to succeed a Douglas Democrat, Munson.[209] Otis Reed, another of the number, was Democratic Postmaster at Roots-

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[209] *Cleveland Leader*, Oct. 29, 1858; *Independent Democrat*, Elyria, Oct. 7, 1858; *Lorain County Eagle*, Oct. 27, 1858.

ville, O.[210] Although the Western Reserve was overwhelmingly Republican in sentiment, none but Democrats were drawn for this service. An Administration measure was to be carried through, under the forms of law, by Administration appointees and supporters. It was, to say the least, a singular coincidence, that, out of the thousands of voters in Lorain County, Ohio, the U. S. Marshal should have selected the only man who had anything to do with the capture of John Price, and been paid for the same through his minor son.

Thirty-seven men were indicted for violation of the Fugitive Slave Law—21 from Oberlin and 16 from Wellington. Among the Oberlin men were Henry E. Peck, Professor of Mental and Moral Philosophy, Ralph Plumb, the town lawyer and banker, and James M. Fitch, the college bookseller and superintendent of the largest Sunday School in Northern Ohio. Not one of them had been to Wellington, or incited any one else to go, or had anything to do with the rescue. They were, however, outspoken anti-slavery men, and they were indicted, mainly, with a view to fixing a stigma on the town and college and to suppressing liberty of speech there and elsewhere.

On the 7th of December the U. S. Marshal appeared in Oberlin with warrants for the arrest of 21 of the persons indicted, and went first to the house of Professor Peck, who received him civilly and went with him to help him find and serve the others. Fifteen were served that day and all agreed to go up to Cleveland the next morning, and appear in Court. It was a very polite affair all around—quite unusual in criminal procedure. The Oberlin people appeared next morning as agreed, pleaded "not guilty" and announced that they were ready for trial. The District Attorney stated that he was

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[210] *Portage County Democrat*, Dec. 29, 1858.

not prepared, although he had had all his witnesses before the Grand Jury and had drawn up the indictments. After some debate and a refusal on the part of the now "prisoners" to furnish bail or even to go bail for each other, they were released on their own recognizances to appear when their cases were called for trial, and returned to their homes and usual occupations.[211]

Five others, when they learned that they had been indicted, voluntarily appeared, pleaded not guilty and were released on the same terms. William E. Lincoln was teaching school at Dublin, twelve miles from Columbus, when the indictments were found. He was arrested there, January 14, 1859,

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[211] The *Cleveland Herald* said, Dec. 9, 1858: "This announcement" [that the Rescuers were ready for trial] "staggered the Federal Attorney, Judge Belden, who did not dream but that these men *like other criminals* would ask postponement. He was then put on the defense and asked for delay. What other proof need the public have that this prosecution is merely for effect at Federal headquarters, than the fact that the District Attorney, who has had the whole matter under his control, who knows all the secrets of the Grand Jury room, who can lay his finger upon every witness for the prosecution, and who can hold such witnesses by the whole Federal force, asks a postponement of the trial. *The Cleveland Leader* said, Dec. 10, 1858: "The circumstances attending the rescue of kidnapped John at Wellington have been published. Democrats were present and active in a cause which roused the nobler feelings of man and made all eager to redress an outrage which all decent slaveholders reprehend. *Not one of these has been indicted.*" *The Western Reserve Chronicle* said, Dec. 15, 1858, "We learn from the Cleveland papers of Friday that the indicted citizens of Oberin appeared in Court on Thursday and demanded an immediate trial. The U. S. Attorney faltered, stammered, looked confused, but finally said he was not ready for trial. * * * It is not too much to say that they will never be tried." And this proved to be true as to all but two. *The Cleveland Plain Dealer* had a very flippant article, Dec. 7, 1858, with staring headlines:

"THE SIEGE OF OBERLIN. THIRTY-SEVEN OBERLINITES INDICTED BY THE U. S. GRAND JURY. FOR RESCUING A FUGITIVE SLAVE. CARRYING THE WAR INTO AFRICA."

The animus of the prosecution was so clearly revealed by this article that it was reproduced—headlines and all—in the *Ashtabula Sentinel*, Dec. 16, 1858. Again the *Plain Dealer* said, Jan. 13, 1859, "The right to reclaim fugitives from labor *is in the Constitution.* * * * A law has been passed whose main provisions are in accordance with that clause of the constitution. The details of the law we never liked" [Important admission!] "but with these Higher Law gentlemen it is the essence of the law, *that power which reclaims the fugitive*, which they resist * * *

We are not prepared for a Theocracy just yet. These Priests and Professors of Oberlin are no doubt good Christians and sincere men, but they are very bad politicians. 'Much learning hath made them mad.' " An unfortunate parallel! The Oberlin men were quite content to be likened to St. Paul and to have the *Plain Dealer* assume the role of Festus.

by deputy-Sheriff Davis of Franklin County, who had helped to kidnap John Price. Davis had with him an able-bodied constable and Lincoln was a thin, pale student, who made no resistance but merely asked time to change his clothes. Davis proceeded to put hand-cuffs on him in the presence of his frightened and crying pupils, drove him to Columbus and threw him into jail with criminals of the lowest type, kept him there over night, and took him next day to Cleveland, where he was released on the same terms as the others and, after going to Oberlin to borrow money enough to pay expenses, returned to his school. This exhibition of wanton brutality again stirred up public feeling, which had begun to subside after the release of the first prisoners on their own recognizances.[212] The people of Dublin, without distinction of party, held an indignation meeting before Lincoln's return and expressed their opinion of the brutal treatment he had received in the following series of resolutions, which were published in the *Ohio State Journal*, January —, 1859; and the *Cleveland Herald*, January 20, 1859:—

> "*Resolved*, That in this outrage, prompted mainly by personal revenge, we see our own liberties attacked, and hereby express our unqualified disapprobation of this illegal, cowardly and insulting use of official authority.
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> "*Resolved*, That in the spirit expressed by our forefathers in their motto 'Resistance to tyrants is obedience to God,'

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[212] *Cleveland Leader*, Jan. 18 and 20, 1859; *Cleveland Herald*, Jan. 19, 20, 21 and April 13, 1859; *Independent Democrat*, Elyria, Jan. 19, 1859; *Ashtabula Sentinel*, Jan. 20, 1859; *Portage County Democrat*, Jan. 26, 1859; *Ashtabula Telegraph*, Jan. 22, 1859. *The Ohio Statesman*, Columbus, Jan. —, 1859, published a card from Davis and attempted to justify his action. It said, "The officer was perfectly right in putting hand-cuffs on Lincoln * * * The truth is, that the sight of such officers as him handcuffing their prisoners and walking them off through pale crowds of abolitionist sympathizers will very soon bring the Oberlin people, negroes and all, to a wholesome fear of the law." Another manifestation of "defective psychology!" The "moral effect" of such an exhibition was simply to make the blood of every humane man boil. The *Cleveland Plain Dealer* said, Jan. 18, 1859, "All there was wrong about it, the deputy overacting his part, as Zealots in law as well as in religion always will do, put the arrested in irons to bring him here. This was entirely wrong, but the Deputy alone was to blame for it, and he would not be considered to blame anywhere South of the National Road."

we do heartily sympathize with said Lincoln and his fellow accused, and consider the charge laid against them an honor rather than a disgrace to all true Americans.

"*Resolved*, That we also express our disapprobation of that law which compels us against the dictates of conscience and humanity, to assist in sending back a fellow citizen to slavery.

"*Resolved*, That we hereby pledge ourselves, hereafter to oppose any such illegal use of official authority in our community by either kidnappers, deputy marshals, or deputy marshals' deputies."

A Dublin correspondent of the *Herald* wrote, "We feel more deeply grieved in regard to the affair, because Davis, before he became turnkey of the county jail, was a citizen here."

Prominent lawyers in Cleveland and Elyria volunteered to defend the Rescuers, (as we shall call them hereafter), free of charge, and the services of Albert G. Riddle, Rufus P. Spalding, S. O. Griswold, and F. T. Backus, of Cleveland, and Stevenson Burke, then practising law in Elyria, were accepted. The cases were continued, in January, to March, and again, in March, to April 5. At each continuance, the Plain Dealer fulminated against the "Higher Law Apostles;" the Democratic county papers gave back faint echoes; and the impression was confirmed that the cases were kept alive only for political effect and never would be tried.

But at last the stage was prepared; the witnesses were summoned; the government elected to try Simeon Bushnell first, and on April 5th the trial began. Public interest in the case had been steadily growing. The Court room was packed with a very intelligent and attentive body of spectators. Reporters were in attendance for the four Cleveland papers and for the *New York Tribune*, *Worcester* (Mass.) *Spy*, *Pittsburgh Commercial Journal* and Bailey's *Free South*, "the only free paper in Kentucky."[213]

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[213] *The Cleveland Plain Dealer*, April 4, 6 and 7, 1859; *Cleveland Leader*, April 6, 1859; *Cleveland Herald*, April 5, 1859.

All the leading papers of the Western Reserve had correspondents in attendance and the editors of such papers as *The Ashtabula Sentinel*, *Painesville Telegraph*, *Portage County Democrat*, *Independent Democrat*, of Elyria, and *Western Reserve Chronicle* were frequent visitors and recorded their impressions of Court and counsel, of the prisoners, and of witnesses and their testimony.[214] The *Cleveland Plain Dealer*, on April 4, in the usual flippant style of "Artemus Ward" (Charles F. Brown) the associate editor, announced the setting of the case for April 5, under the flaring headlines "THE OBERLIN RESCUE CASE. FREEDOM SHRIEKS," etc., etc. The daily reports of the testimony taken, arguments of counsel, etc., filled columns of the Cleveland dailies, the editors commented thereon in leading editorials, a column or more in length, and the local reporter contributed his little squibs describing the appearance of the witnesses, humorous incidents, etc. No case had ever before attracted such universal attention on the Western Reserve, or was watched with such a critical spirit.[215]

A struck jury had been demanded and the Clerk

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[214] See *Ashtabula Sentinel*, April 14, 1859.; *Western Reserve Chronicle*, April 20, 1859; *Painesville Telegraph*, April 21, 1859; *Independent Democrat*, Elyria, April 13, 1859.

[215] *The Cleveland Plain Dealer* said, April 4, 1859, after giving the names of the indicted, "Some of the above are negroes and some are not. Those that are not are apparently sorry that they ain't. * * * We look for lively times during this important trial. It is understood that the friends and admirers of the Rescuers will be here in large numbers from all over the 'Preserve.' * * * The matter is creating a tremendous sensation all over the country. Exciting times are upon us." And, on April 6, 1859, "The United States Court room was densely packed yesterday and this forenoon with spectators, some of whom have come hundred of miles to hear the trial." And on April 7, 1859, "The United States Court Room continues to be crowded with spectators, many of whom are ladies and the Slave Rescue case grows daily more and more interesting." The announcements in the other papers were less facetious. The *Cleveland Leader* said, April 6, 1859, "The trial is exciting great interest. The Court Room was crowded during the day, yesterday, with citizens and strangers. Reporters are here from the East and a detailed report is being taken for the *Law Monthly*. The indicted gentlemen came into Court yesterday morning and a more respectable body of prisoners have never appeared at a bar." The *Cleveland Herald* said, April 5, 1859, "We think no criminal court ever had a more respectable class of prisoners in the criminal docks."

got up a list of 40 names from which each side struck out 12, leaving 16 persons from which to select the 12 who were to try the case. In a district where Republicans were largely in the majority, only ten of the forty selected by the Clerk were Republicans and those were struck off by the District Attorney. Even the Democrats, left after striking, were subjected to inquiry as to whether or not they approved the Fugitive Slave Law. The result, as intended, was an ultra partisan jury prejudiced, to a man, against any person entertaining anti-slavery views. The only man from the Western Reserve on the jury, as made up, was Daniel P. Rhodes, of Cleveland, father of J. F. Rhodes, the historian. It was discovered by counsel for the defendants, on the sixth day of the trial that one of the jurors, Charles N. Allen, of Cadiz, O., was an officer of the Court—a deputy Marshal! The fact was announced in open court, but, as no motion was made to discharge the jury, the Court made no order in the matter. Partisan feeling was more intense in the fifties, than it is at present, and came little short of personal enmity against those of the opposite party. This fact was much commented on, during and after the trial, and the verdict was discounted in advance and carried no more weight than a political manifesto. As there was real ground for complaint of the "hand-picked" juries empanneled in United States Courts, and as there is always danger that such juries will be made up of strongly biased partisans, although there is marked improvement in present procedure, it may be well to note the protests made at this time.[216]

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[216] The *Oberlin Evangelist* said, March 16, 1859, "The jury which is to try the first case is already struck and is geographically, and so far as we can learn, politically a singularity. Gathered from the Northern half of Ohio, it exhibits out of the sixteen names on the panel, *only one from the Reserve*. Taken from a district, the population of which numbers tens of thousands of anti-slavery men, and which is, by an overwhelming majority, Republican in politics, it has, so far as we have ascertained, *neither an Abolitionist nor a Republican on the list*. We will not

Most of the facts narrated were proved on the trial which occupied ten days and was hard-fought from start to finish. The Judge and District Attorney knew that the administration at Washington expected them to do their duty and that a failure to convict and sentence would probably be visited with displeasure. There were many clashes between opposing counsel and some ill temper was shown, the judge himself occasionally seeming ruffled. The tension was relieved, now and then, by a humorous incident, which was laughed at, all the more heartily, because of the previous strain.

When the Kentucky giant, Jennings, took the stand he testified that he meant to take the nigger before Commissioner Chittenden at Columbus. He added, "Didn't take him there, however. There

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yet say that justice is to be mocked in the trial. We will say, however, that the present appearance is that such will be the fact." The *Western Reserve Chronicle* said, April 20, 1859, "The organization of the Federal Courts has often been the subject of comment; but never has such bitterness been felt on this subject as now, when it is seen that for the trial of political offences, juries are systematically packed so as to exclude any but partizans of the administration from the jury box. * * * all such attempts to enforce a hated and unconstitutional law among the people of Ohio * * * will rebound upon the head of the party which makes them and upon the accursed pro-slavery cause, which is at the bottom of them all." *The Portage County Democrat* said, April 20, 1859, "The Cleveland papers bring to light the fact that a 'struck jury' was summoned to try the Rescue cases. The Marshal selected forty names. The small-minded, infamous and vindictive District Attorney struck off *every Republican* and thus the jury was composed of *twelve Democrats*." *The Independent Democrat*, Elyria, said April 20, 1859, under the heading "A BURLESQUE OF JUSTICE," "The offence assumes a political character, inasmuch as the infamous law which they are accused of violating is despised by one party and cherished by another. To try these men a Grand Jury was empannelled, every man of whom was a Judas Taney Democrat and one of them was the father of the boy who was hired to decoy the negro into the hands of his kidnappers. Such men would have no difficulty in finding an indictment, let the facts be what they might. With the hope of securing a fair traverse jury to try the case, the defendants asked for a struck jury. This was granted and the names of forty men were put on the list, every man of whom were Taney Democrats except twelve, and these were immediately struck from the list, leaving the defendant to choose his men from that array of office-holders and office expectants. The result was just what the Marshal and the Clerk desired—a jury who would feel delighted at the opportunity of punishing the violators of their favorite Fugitive Slave Law. The *Ohio State Journal* said, April, 1859, "Under a bill of indictment found by a packed grand jury, thirty-seven citizens of Ohio have been put upon their trial before another packed jury and one of their number, Simeon Bushnell, had been found guilty of a violation of the infamous Fugitive Slave Law."

was, as I thought, as much as a thousand people around and in the house * * * should think there were 500 guns in the crowd."

The magnifying power of his fears provoked much laughter.

Bacon, the claimant, testified that he told Jennings if he brought his boy, John, back, he would give him one-half of what the nigger would sell for. Jennings, who had not heard his testimony, swore that he "niver made no bargain with Bacon about pay for ketchin the nigger," and that what he did was done "out of *pure neighborly regard*," which produced another laugh. Being recalled later, after he had had an opportunity to become posted, he admitted that Bacon told him he would pay $500 to any one who would bring back his boy John.

When asked how he came to go to Boynton's the Sunday before the capture, he answered:

"Wal, we was told that it would be dangerous to undertake to arrest the nigger in that town; so I went to old Mr. Warren and asked if he knowed of any one in Oberlin a man *could put confidence in*" (great laughter) "and he told me I could trust Boynton."

When asked where he found and took possession of John, he said, at Wadsworth's hotel in Wellington. "Saw the people crowding in with guns *asking for the men that had John* and didn't stop to talk long."

Mitchell proved a very swift witness and taxed the credulity of the audience to the breaking point by saying that John *wanted* to go back to his master. "I ast him—Don't you want to see your Mammy?" and he said "yes, but he would much rather see his *old missus*." (Laughter.)

"He told me that he started to go back to Kentucky once; got as far as Columbus and the folks from Oberlin overtook him and brought him back!" (Great laughter.)

When asked to describe his movements after they reached the hotel at Wellington, he said:

"Took John up stairs while waiting for dinner. Took John down and had him eat dinner with us. That was the first time I ever eat with a *nigger*, though." (More laughter.)

Asked to describe Bacon's boy, John, he went off into quite a dissertation on the varieties of negroes, and wound up by saying to the District Attorney: "I have seen a great many niggers whiter than *you*. Call them light mulattoes," which turned the laugh on the District Attorney.

A witness for the prosecution, being asked if anything was said in the crowd about the "HIGHER LAW," answered:

"I don't know, unless that was what they meant to send to *Elyria* about," which produced a laugh, in which the District Judge heartily joined.

A witness for the defense kept calling the captors, "Southerners." "Why do you call them Southerners?" asked the District Attorney.

"Because Southerners are the men that *usually carry off* people."

One witness said he staid in the crowd until the final rush was made. "Then I expected there would be some shootin' going on, and I didn't want to die just then, so I left."

There could be no dispute about Bushnell's participation in the rescue of John Price, so the defense turned on a question of *fact*, whether John Price *was* Bacon's long lost slave, John, and questions of *law*, whether he was properly in the custody of his captors, and whether, if so, Bushnell, having no personal notice or knowledge that John was a fugitive from service, and believing, on the contrary, that he was not, was guilty of violating the law.

On the question of identity, Bacon described his boy, John, in the Power of Attorney which he gave Jennings, as "about 5 feet 6 or 8 inches high, heavy set, *copper colored* and will weigh about 140

or 150 pounds," and on the witness stand described him as "eighteen years old, about 5 feet 8 inches high, *copper color* and *heavy built*." He had not seen John Price and, of course, could not swear that John Price was his slave.

Jennings described Bacon's boy as "21 or 22 years old. Think he would weigh 165 or 170 lbs. Some would call John copper color. Copper color is between black and light mulatto."

Mitchell described Bacon's boy as "about 5 feet 8 or 10 inches high; weighs about 150 or 160 pounds. I should call him dark copper color."

While the witnesses do not agree very well in their descriptions, this much seemed to be certain, that Bacon's slave was at least 5 feet 8 inches high, *heavy set*, weighed at least 150 lbs. and was *copper colored*.

Five witnesses from Oberlin, who had known John Price well, described him as 5 ft. 4 or 5 inches high, weighing not over 125 or 130 lbs. and "*black*," "*very black*," "*decidedly black*."

On the question of identity the verdict should have been for the defense. Thousands of negroes in the northern states would have fitted the description of Bacon's slave John, better than John Price did, and one of *them* might have been taken just as well. Should honorable citizens be fined $1,000 and imprisoned six months for objecting?

What probably turned the scale in favor of the prosecution was the admission of testimony by Jennings and Mitchell, against the objections of defendant's counsel, that John Price *told them* that he was Bacon's slave and that he wanted to go back. John Price, himself, would not have been allowed to testify under the Fugitive Slave Law, on the probable theory that no one could believe a negro under oath. But what any one else *says he said* when he was *not* under oath, is perfectly admissible. Such was the logic of a court bound to convict!

It was called, in argument, an "admission," but John Price was not on trial and Simeon Bushnell had made no admissions and the alleged "admission" of John was not made in his presence. It is to be hoped that the day will never come when an American citizen may be sent to the penitentiary on the admission of a third party that *he* ought to be there.

Admitting, for the sake of argument, that John Price was Bacon's slave, was he properly arrested, and did the defendant know or have reason to believe that he was? The only paper deputy Marshal Lowe had when he arrested John, and the only paper shown to the Oberlin men who asked to see his authority, was the warrant issued by Commissioner Chittenden at Columbus. It had no seal—Lowe said it did not need any—and it was not issued by a commissioner of the "proper district," and therefore had no validity. This was practically admitted by the prosecution, who rested their case on the power of attorney given by Bacon to Jennings. This power of attorney may have been shown to some of the Wellington men, but was not shown to the Oberlin men. Why? Manifestly because the description of the tall, heavy, copper-colored slave of Bacon did not fit the short, light-weight, very black negro, John Price, and any of the men who knew John Price would have detected the discrepancy at once. So the invalid warrant was flourished at Wellington, to avoid the question of identity, and the power of attorney was used in the trial to convict Bushnell, who had no knowledge of it at the time of the rescue. Jennings and Mitchell both swore that John Price was Bacon's slave, John; but their credibility was greatly shaken. Both were interested parties; both were indicted under the laws of Ohio for kidnapping John Price and might be tried soon; both made such incredible statements on the witness stand as to provoke the derisive laughter of the large audience; and Jennings was flatly contradicted by

Bacon in the matter of agreed compensation for his services in capturing and delivering Bacon's John.

While four attorneys appeared for the defense, but two were allowed to argue the case—A. G. Riddle and R. P. Spalding. They did not make the most of these points for the defense. In fact, Riddle began by stating the case "most strongly for the government," by way of introduction to a very rhetorical argument which amounted to nothing if that statement was correct. He said:—

> "As they" [Jennings] and party "thus held him in his agony, the defendant and his associates approached; and, knowing John was a slave in Kentucky, and how and by whom he was there held, that he had escaped, and how and for what purpose he was then seized and held; and knowing all this, they put forth their strong hands, wrenching John from the grasp of his captors, consigned him to the boundless realm of freedom! This is what they did and all they did, and in so doing they obeyed the laws of God," etc.

Almost any jury, after such a statement, would come to the conclusion that the main question of fact had been settled adversely to defendant and that the rest was an argument on the law, addressed to the Court—or the public—but not to them. What did they care about legal quibbles? And how could facts be altered by Riddle's rhetorical finish:—

> "I have sunk the lawyer—I have sunk the advocate, that I might stand before you in my unsullied manhood and appeal to you as men.
>
> "I have forgotten party prejudices that I might remember and remind you of issues involving the common rights, franchises, and liberties of us all as citizens of a great free State.
>
> "I have sunk the individual interest of the Defendant, that I might appeal to you to protect the interest of all living things, and vindicate the dignity and sovereignty of our glorious commonwealth."

Almost the only question of fact argued by Judge Spalding was that Jennings and Lowe relied upon the warrant as their authority for arresting John Price and their attempt to take him out of the

District to Columbus, and that this warrant was the only thing shown at Wellington. He began a lengthy argument on the Constitutionality of the Fugitive Slave Law as follows:—

> "Although I am not so vain as to imagine that I can, in this Court, procure a reversal of those decisions which have been made in other Federal Courts of this Union, I hold it to be none the less my duty to argue with the same accuracy, fidelity and fullness the questions involved, as though a sound argument would certainly influence the Court in coming to a right decision. 'Agitate! agitate! agitate!' is my motto, and my duty always, until the occasion for agitation is removed."

He argued that the law was unconstitutional, because:—

1. It provides pains and penalties for free citizens of Ohio, for acts concerning which they are not amenable to Congress.
2. It overrides the writ of *habeas corpus*, the right to which is guaranteed by the Constitution.
3. It violates the Northwestern Ordinance which limits the reclamation of slaves in Ohio to such as escape from the "original States."
4. It denies to the person arrested as a fugitive from service the right of trial by jury.

He argued also that the law required that the fugitive should be taken before a Court, Judge or Commissioner of the Northern District of Ohio, and that the captors were not protected in an attempt to carry John to the Southern District of Ohio. In conclusion, he said:—

> "I know full well * * * what the decisions of the highest tribunal in the Nation have been with reference to it; and I know as well the deference which in all ordinary cases is due from tribunals of inferior jurisdiction to its rulings. But, sir, I hold that so glaringly unjust a decision as the affirmation of the constitutionality of this act *can bind no one*; and had I the distinguished honor to occupy the seat which is so eminently filled by your Honor * * * I should feel bound to pronounce the Fugitive Slave law of 1850 *utterly unconstitutional, without force,* and void; though

> in thus doing, I should risk an impeachment before the Senate of my country; and, Sir, should such an impeachment work my removal from office, I should proudly embrace it as a greater honor than has yet fallen to the lot of any Judicial officer of these United States!"

The District Attorney was justified in saying, as he rose to make the final argument: "Are we in a Court of Justice? Or are we in a political hustings?" Willson disposed of most of the arguments by saying, in his charge to the jury:—

> "Much has been eloquently said by learned counsel that would be entitled to great weight and consideration if addressed to the Congress of the United States, or to an ecclesiastical tribunal, where matters of casuistry are discussed and determined."

The truth is that both Riddle and Spalding were ambitious for political honors, and, while both sympathized sincerely with the defendants when they offered their services, they valued the opportunity for self-advertisement, and worked it for all it was worth.[216a] Riddle was elected to Congress in the fall of 1860, and Spalding, who had been a "Free Democrat" until the organization of the Republican party, and a Judge of the Ohio Supreme Court, was elected to Congress in 1862, 1864 and 1866.

On the other hand, counsel for the Government were not free from political ambition and both Judge Bliss, who made the opening argument for the prosecution, and District Attorney Belden, who closed, wandered from the real issues in the case and indulged in coarse vituperation of the "Saints of Oberlin," Peck, Plumb and Fitch, who had been indicted but were not then on trial, and in sneering allusions to Christian precepts and practice. Judge Bliss argued that the fact that John was a fugitive was "*proved* by his being found in the common resort

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[216a] *The Cleveland Plain Dealer* said, April 14, 1859, "The three Oberlin Attorneys engaged in the Rescue cases are killing two birds with one stone each. They are defending the Rescuers and running for Congress at the same time."

of fugitive slaves, to-wit, in Oberlin." There was no testimony in the case on which to base such a statement. Belden said, "Here are the Saints of Oberlin, Peck, Plumb, Fitch, to which are to be added Saints Spalding and Riddle and *sub-Saint* Bushnell—all saints of the Higher Law. * * * Don't talk of Higher Law as God's Law, it is Devil's law, and it would make a Hell upon earth." "Christ denounced idolatry, polygamy, but not a word against slavery." "Higher law people run into the predicament of free love and infidelity." "Do you teach the Bible at Oberlin, or do you point out the spires of the churches as Hell poles?" [217]

The dignity of the court was preserved in the charge to the jury; but the identity of John Price with Bacon's slave, John, was *assumed by the court*, instead of being submitted to the jury, and all the technical defenses were ruled out. As to the defense of want of knowledge as to whether John Price was a fugitive from labor, the Court charged the jury; "But that dark complexion, woolly head, and flat nose, with possession and claim of ownership, do afford *prima facie* evidence of the slavery and ownership charged."

The verdict was "Guilty."

Having secured this verdict in one case, the District Attorney thought all he had to do was to multiply it by 21 and convict the whole batch. He proposed to try the case of Charles Langston to the same jury. Counsel for the defendants objected that the jury had just formed and expressed an opinion and that no one of them was qualified to act as a juror in Langston's case. The court overruled the objection and said it was proper that this jury should try all the cases.

Thereupon counsel for the defense lost their

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[217] The *Cleveland Leader* said, April 16, 1859, "The language and spirit of the address were in the worst possible taste, and evoked the indignation of the audience, evinced, in an instance, by unmistakeable hisses."

tempers and said that they would not stultify themselves by attempting a defense before such a jury. They called the ruling "a villainous outrage," "a mockery of justice," "a monstrous proceeding," and used other language which savored of contempt of court.[217a]

Then the District Attorney got mad and asked that all of the defendants be ordered into the custody of the Marshal, and it was so ordered. Then Judge Spalding requested that their recognizances be canceled and muttered something about a gratuitous insult to men who had been in constant attendance and scrupulously obedient to every order of the court.

It was a fierce squall while it lasted, but the Judge and District Attorney soon recovered their equipoise and, perceiving that the rulings and commitment were "bad politics"—say nothing of the law—now proposed that the prisoners should be released from the custody of the Marshal on renewing their personal recognizances. But the prisoners, having felt much aggrieved at the wanton insult and having also a keen instinct as to what was and what was not good politics, refused to execute new recognizances and left it to the Judge and District Attorney to back down and apologize, or send them to jail. The Judge, feeling that it was better that 20 innocent men should suffer than that one guilty judge should admit his mistake, let them go to jail, where they remained for 85 days, every one of which was fruitful in converting thoughtful Whigs and Democrats into good Republicans.

When the case of Charles Langston was called, on the following Monday, the judge *did* reverse

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[217a] Counsel might, if they had known about it, have cited the case of the Regicides, who were implicated in the beheading of Charles I, King of England. A separate jury was impanneled for each one of the alleged conspirators who demanded it, as a matter of right. This was in 1660. *Howell's State Trials*, V. 1011, 1036, 1050, 1061, 1078, 1117, 1146, 1177, 1185 and 1196.

himself, to the extent of ordering a new jury to be empaneled, and the trial proceeded.

This time it took fifteen days to convict. A new point made by the District Attorney in this case was taken up and pressed to its logical but absurd conclusion by the attorneys for the defense, *i. e.*, when Jennings came into the state of Ohio armed with a power of attorney from Bacon, he acted as the representative of the United States, and interference with *him* was levying war against the United States(!) Thus easily, under the Fugitive Slave Law could a slave owner make a great nation out of a very common man!

Langston took no part in the actual rescue of John Price, but did insist, in talking with deputy Marshal Lowe, whom he knew personally, that the question of Bacon's, or as he then understood the claim, Jennings' ownership of John Price, should be settled by some court in the District in which he was found. The Court again assumed that John Price was Bacon's slave, John, and charged the jury, on the point raised by Langston, "But when a fugitive from labor is captured and held in any of the modes and under the authority designated by the Act of Congress of 1850, *any interference by the State authorities has no justification, nor can those be justified who invoke their interference, when they know the fugitive is thus held.*" The jury in this case stood 10 to 2 for conviction, on the first ballot, and in the course of an hour the two were convinced that the Judge's charge left them no ground to stand on and they joined in the verdict of "guilty."

Bushnell and Langston were sentenced on May 11th, the former to 60 days' imprisonment, and to pay a fine of $600; the latter, owing to his impassioned plea on behalf of the poor and oppressed, which stirred the emotions of all present, drawing a fine of only $100 and imprisonment for 20 days. Langston's plea was, in the estimation of all who heard it,

the most eloquent and effective speech made during the entire proceedings. It was published in full in most of the Western Reserve papers and special attention called to it by leading editorials.[218]

To fully appreciate such a speech one must have

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[218] The *Cleveland Leader* said, May 13, 1859, "Charles H. Langston yesterday proved himself worthy of his Anglo-Saxon, Native American, African and Revolutionary blood. He stood respectful but unawed in the presence of Federal Court despotism and, like Paul of old, spoke the 'words of truth and soberness.' It will live in history. The children of the Free will read it in their school books and will execrate the memory of the Court and the Jury who consigned such a man to fine and imprisonment for a *crime* so God like!" * * * "The remarks of the defendant, Charles Langston, were noticeable for their force, clearness, earnestness, rhetoric, logic and truth. No speech has been made in the long course of these trials, that so appealed in itself to the hearts of the hearers as his. There was a power and solemnity to it which could not but be felt by all, whether friends or enemies to the colored race. He, at least, was a MAN." The *Cleveland Plain Dealer*, said, May 12, 1859, "On the opening of Court Mr. Langston appeared for sentence, and was asked if he had anything to say in mitigation of his sentence. To which Mr. Langston, who is a fine looking, light mulatto, responded both courteously and eloquently in manner and matter." The *Ohio State Journal* said, May 4, 1859, "Before the Judge passed sentence upon him, He made one of the most manly and eloquent speeches we ever read. * * * We will publish this speech." The *Ashtabula Telegraph* said, May 14, 1859, "he addressed the Court for half an hour riveting the attention of the audience and called out marks of applause and admiration, and we should think, from the report of it in the *Herald* that it was characterized by more good sense, good temper, force and dignity, than anything that has proceeded either from the Bench or the Prosecuting Attorneys since the commencement of these trials." The *Independent Democrat*, Elyria, said, May 18, 1859, "He stood up before the Judge and Jury and, in the presence of as many people as could crowd into the room, delivered the speech which will be found in another column. It was a scorching, withering, and eloquent expose of the whole farcical trial and a complete annihilation of the sophistry and arbitrary power of the Court and District Attorney, to procure a conviction under an unjust and inhuman law. * * * Let it be read by every person. The Judge was so affected by the truths he uttered that he could scarcely proceed to pass sentence upon him." The *Painesville Telegraph* said, May 19, 1859, "We publish it" [2 ¼ columns on the editorial page] "because it is so noble and manly a vindication of himself. It is an eloquent contrast, both in aim and language, with that conduct which others connected with these trials have evinced. It is worth handing down. Read it and then reflect that, by the decision of the United States Supreme Court, he is one of those who have 'no rights that white men are bound to respect.' " The *Ashtabula Sentinel* said, May 19, 1859, "These trials were brought to a temporary close on Thursday last by the sentence of Langston, whose speech and the proceedings of that morning we give in full. Let us here say to the reader, you will miss a treat, if you overlook that speech. It is a masterly effort, * * * The spectacle of a man standing up in the face of tyranny, and telling the withering truths uttered in this speech is grand at any time; but when the effort is made under such circumstances as surround this case it is sublime. Judge Willson evidently quailed under it." See also *Cleveland Herald*, May 12, 1859; *Western Reserve Chronicle*, May 18, 1859; *Summit County Beacon*, May 18, 1859; *Jeffersonian Democrat*, Chardon, May 20, 1859; *Portage County Democrat*, May 25, 1859; *Oberlin Evangelist*, May 25, 1859; *Guernsey Times*, May 26, 1859; *Norwalk Reflector*, May 24, 1859.

seen the actor and heard the rich, musical voice, charged with deep feeling with which the words were uttered. A few extracts may be permitted here, as they portray, vividly, the pitiful condition of the colored man, bond or free, "under the law" in the fifties.

"I know that the courts of this country, that the laws of this country, that the governmental machinery of this country, are so constituted as to oppress and outrage colored men, men of my complexion."

"Some days prior to the 13th of September, 1858, happening to be in Oberlin on a visit, I found the country round about there, and the village itself, filled with alarming rumors as to the fact that slave-catchers, kidnappers, negro-stealers, were lying hidden and skulking about, waiting some opportunity to get their bloody hands on some helpless creature to drag him back—or for the first time—into helpless and life-long bondage. These reports becoming current all over that neighborhood, old men, and women and innocent children became exceedingly alarmed for their safety. It was not uncommon to hear mothers say that they dare not send their children to school, for fear they would be caught up and carried off by the way. Some of these people had become free by long and patient toil at night, after working the long, long day for cruel masters, and thus at length getting money enough to buy their liberty. Others had become free by means of the good-will of their masters." [This had been the case with the Langston brothers and Augustus Chambers] "And there were others who had become free—to their everlasting honor I say it—by the exercise of their own God-given power—by escaping from the plantations of their masters." * * *

"These three classes were in Oberlin, trembling alike for their safety, because they well knew their fate should those men-hunters get their hands on them. In the midst of such excitement, the 13th day of September was ushered in—a day ever to be remembered in the history of that place, and I presume no less in the history of this Court—on which those men, by lying devices, decoyed into a place where they could get their hands on him—I will not say a slave for I do not know that— but *a man*, a brother, who had a right to his liberty under the laws of God, under the laws of Nature, and under the Declaration of American Independence."

"Being identified with that man by color, by race, by manhood, by sympathies, such as God has implanted in us all, I

felt it my duty to go and do what I could toward liberating him. * * * I went to Wellington, and hearing from the parties themselves by what authority the boy was held in custody, I conceived from what little knowledge I had of law that they had no right to hold him."

"It is said that they had a warrant. Why then should they not establish its validity before the proper officers? And I stand here to-day sir, to say, that with an exception, of which I shall soon speak, *to procure such a lawful investigation of the authority under which they claimed to act, was the part I took in that day's proceedings, and the only part.* I supposed it to be my duty as a citizen of Ohio—excuse me for saying that, sir—as an outlaw of the United States [much sensation], to do what I could to secure at least this form of Justice to my brother whose liberty was in peril. *Whatever more than that has been sworn to on this trial, as an act of mine, is false, ridiculously false.*"

"I did say to Mr. Lowe, what I honestly believed to be the truth, that the crowd was very much excited, many of them averse to longer delay and bent upon a rescue at all hazards; and that he being an old acquaintance and friend of mind, I was anxious to extricate him from the dangerous position he occupied, and therefore advised that he urge Jennings to give the boy up. Further than this I did not say, either to him or to any one else.

"The law under which I am arraigned is an unjust one, one made to crush the colored man, and one that outrages every feeling of Humanity, as well as every rule of Right. * * * I remember the excitement that prevailed throughout all the free States when it was passed; and I remember how often it has been said by individuals, conventions, communities and legislatures, that it never could be, never should be, and never was meant to be, enforced."

"But I have another reason to offer why I should not be sentenced * * * I have not had a trial before a jury of my peers. * * * The Constitution of the United States guarantees—not merely to its citizens—but to *all persons* a trial before an *impartial jury.* I have had no such trial. The colored man is oppressed by certain universal and deeply fixed *prejudices.* Those jurors are well known to have shared largely in these prejudices, and I therefore consider that they were neither impartial, nor were they a jury of my peers. And the prejudices which white people have against colored men grow out of this fact; that we have, as a people, consented for two hundred years to be *slaves* of the whites. We have been scourged, crushed, and cruelly oppressed,

and have submitted to it all tamely, meekly, peaceably; I mean as a people, and with rare individual exceptions. * * * And while our people as a people submit, they will as a people be despised. * * * The jury came into the box with that feeling. They knew that they had that feeling and so the Court knows now, and knew then. The gentlemen who prosecute me have that feeling, the Court itself has that feeling and even the counsel who defended me have that feeling.

"I was tried by a jury who were prejudiced; before a Court that was prejudiced, and defended, though ably, by counsel that were prejudiced."

"One word more, sir, and I have done. I went to Wellington, knowing that colored men have no rights in the United States which white men were bound to respect; that the courts had so decided; that Congress had so enacted; that the people had so decreed. There is not a spot in this wide country, not even by the altars of God * * * no, not in the old Philadelphia Hall, where any colored man may dare to ask a mercy of a white man. * * * When I appeal to Congress, they say he has a right to make me a slave, and when I appeal to your Honor, *your Honor* says he has a right to make me a slave, and if any man, white or black, seeks an investigation of that claim, they make themselves amenable to the pains and penalties of the Fugitive Slave Act, for BLACK MEN HAVE NO RIGHTS WHICH WHITE MEN ARE BOUND TO RESPECT. [Great applause.] I, going to Wellington with the full knowledge of all this, knew that if that man was taken to Columbus, he was hopelessly gone, no matter whether he had ever been in slavery before or not. I knew that I was in the same situation myself, and that by the decision of your Honor, if any man whatever were to claim me as his slave and seize me, and my brother" [John M. Langston] "being a lawyer, should seek to get out a writ of *habeas corpus* to expose the falsity of the claim, he would be thrust into prison * * * for interfering with the man claiming to be in pursuit of a fugitive, and I, by the perjury of a solitary wretch, would, * * * be helplessly doomed to lifelong bondage, without the possibility of escape.

"Some persons may say that there is no danger of free persons being seized and carried off as slaves. No one need labor under such a delusion, sir, *four* of the eight persons who were first carried back under the act of 1850, were afterwards proved to be *free men*. The pretended owner declared that they were not his, after his agent had 'satisfied the Com-

missioner' that they were by his oath. They were free persons, but wholly at the mercy of the oath of one man. * * * A letter was not long since found upon the person of a counterfeiter when arrested, addressed to him by some Southern Gentleman in which the writer says: *'Go among the niggers; find out their marks and scars; make good descriptions and send to me, and I'll find masters for 'em.'*

"That is the way men are carried *'back'* to slavery.

"But I stand up here to say, that if for doing what I did on that day at Wellington, I am to go in jail for six months and pay a fine of a thousand dollars, according to the Fugitive Slave Law, and such is the protection the laws of this country afford me, I must take upon myself the responsibility of self-protection; and when I come to be claimed by some perjured wretch as his slave, I shall never be taken into slavery.

"I stand here to say that I will do all I can, for any man thus seized and held, though the inevitable penalty of six months imprisonment and one thousand dollars fine for each offence hangs over me. We have a common humanity. You would do so; your manhood would require it; and no matter what the laws might be, you would honor yourself for doing it; your friends would honor you for doing it; your children through all generations would honor you for doing it; and every good and honest man would say, you had done *right*!"

[Great and prolonged applause, in spite of the efforts of the Court and the Marshal.]

On the very day Langston made his eloquent plea and received his sentence, three of the Rescuers living in Wellington, appeared in Court by their attorney, Sherlock J. Andrews, and entered a plea of *nolo contendere* and were sentenced to pay a fine of $20 each, to pay the costs of the prosecution and to be committed to jail for twenty-four hours. They were persuaded to do this by the apparent hopelessness of making a successful defence and by the assurance of the District Attorney, that he did not consider them in reality responsible for the rescue; and that "The Oberlinites are the ones the Government wishes to punish. * * * We shall convict all

the Oberlinites."[219] This was confirmation from an official source of the opinion which had been generally formed and expressed that the main object of the prosecution was political rather than remedial. Oberlin (College and town) was singled out for attack, because of its freely expressed anti-slavery views and its sympathy for a mistreated and oppressed race. Free speech and humanitarian action were to be suppressed in Oberlin and that would bring about universal acquiescence in the extension of slavery and the enforcement of the Fugitive Slave Law. The Republican party would be pilloried, as advocating violations of law and of a solemn compact entered into for the preservation of the Union. Its speedy dissolution must inevitably follow.[220]

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[219] The *Norwalk Reflector* said, May 17, 1859, "Thus it is we are told by this too, of a slavery-ridden administration that it is not the violation of the infamous Fugitive Slave Law that is regarded with horror by him and his masters, but the love of liberty manifested by the men of Oberlin." *The Oberlin Evangelist* said, May 25, 1859, "Oberlin stands conspicuous for its hatred of oppression and its love of liberty. Now this bitter war against Oberlinites is only a deadly blow aimed at the very vitality of liberty. Pro-slavery Federal usurpation cares nothing for Oberlin as such. It is her *love of liberty and hatred of oppression that must be crushed out.*" See also, *Cleveland Leader*, May 13, 1859; *Cleveland Herald*, May 12, 1859; *Ashtabula Sentinel*, May 12, 1859; *Independent Democrat*, May 18, 1859; *Portage County Democrat*, May 18, 1859; *Western Reserve Chronicle*, May 18, 1859. The *Ohio State Journal* said, May 9, 1859, "It would seem then, that it is not so much a violation of the fugitive slave law which is to be punished by the United States, as the anti-slavery sentiment. That is the thing. It is Oberlin which must be put down. It is freedom of thought which must be crushed out."

[220] The *Ohio Statesman* (Dem.) said April —, 1859, "The conviction of Bushnell at Cleveland for the rescue of a fugitive slave from the custody of the United States officers at Oberlin will have a very salutary effect upon the ferocious abolitionists of that classic vicinity. Presuming upon the *perverted sentiment of the majority of the people* of their village, and instigated by the harangues of political promoters and Professors, the Oberlinites have long defied the law. They have now found that it is not altogether powerless to vindicate itself. * * * *The Republican Party has seen the day of its utmost fervor and strength, and its decline will now be rapid.*" [The italics are ours]. This was reprinted, with approval, in the *Cleveland Plain Dealer*, April 20, 1859; and, by way of exposure, in the *Painesville Telegraph*, April 28, 1859. The *Cleveland Plain Dealer* said, Jan. 19, 1859, "The law we have always contended would be much less obnoxious and more effective were it shorn of certain useless and highly objectionable features;" but said, April 7, 1859, "Oberlinism was Abolitionism boiled down to the quintessence of bitterness. Its reputation in this respect has been world-wide. * * *

HOTHOUSE GROWTH OF ANTI-SLAVERY SENTIMENT.

EXTREME STATE-RIGHTS DOCTRINE ADVOCATED ON THE RESERVE.

The thought that anti-slavery men could be forced, by prosecution and imprisonment, to give up, or suppress, their honest convictions was another instance of "defective psychology." Oberlin simply expressed, in words and action, feelings common to all humane persons who were unaffected, directly or indirectly, by selfish considerations or political ambition. It is hard for the present generation to understand how Democratic officials, editors and

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We hope that this Rescue case will open their eyes to their obligations to the Government under which they live and make them better and wiser citizens." The *Lorain County Eagle* (Dem.) said, Jan. 12, 1859; "We have believed and still believe that the Republican party, as a party attained and passed its zenith during the Kansas embroglio of 1856, and but for the exciting nature of that game, so high a point of numerical strength could never have been reached, and now it will require some new infusion of the Divine to kindle the smouldering embers of that decaying faction to that energy and strength which it manifested in the memorable campaign of 1856." The *Portage Sentinel* (Dem.) said, Oct. 7, 1858: "The Republican party is unmistakeably approaching its dissolution. * * * Its platform now lies like an unsightly pile in the gutter, and the party which made it is 'passing away—passing away.'" And again, April 21, 1859, after announcing the verdict in the Bushnell case, "We hope Judge Willson will put the sentence at such fine and imprisonment as will satisfy the 'higher-law' gentlemen of Oberlin that while among mortals, the laws must be obeyed. When a class of divines, professors and other learned men teach resistance to law as a Christian duty, if any of them are convicted, they ought to be punished to the utmost extent of the law. It will do them good. The *Cleaveland Leader* said, April —, 1859, "No intelligent man can resist the conviction that this is a political trial, with no other object than to make political capital for a set of fellows in Northern Ohio who use this as a means of advancing their party against the Republicans generally. * * * The fugitive slave act is felt by the people of Northern Ohio, to be so repugnant to every principle of right and to good government that they have treated it as a dead letter." The *Ashtabula Sentinel* said, April 14, 1859, "In order more effectually to crush out all free principles in Northern Ohio, and to establish the full and undisputed reign of Locofocos and kidnappers, warrants were issued for and indictments found against men who, by the very nature of known circumstances and facts could have had no possible connection with the rescue of the said John. * * * Nor was there any reason to suppose that Mr. Plumb was guilty of the offense laid to his charge. He is a lover of free principles, and an unflinching, uncompromising opponent of the spurious 'Democracy' taught by the official tools of the Legrees of the rice-swamps and cotton fields of the extreme South. This is the way the public treasure is to be expended with a lavish hand in attempting to compass his injury by the confiscation of his property and the incarceration of his person."

politicians ever hoped to make political capital out of a vigorous enforcement of a law which "shocked the moral sense of a majority," to use Judge Willson's own language, and which nearly all Judges felt obliged to apologize for, when charging juries of fellow-citizens of the same political faith as themselves.[220a]

How could any man hope that, in the long run, injustice and inhumanity would win in a battle against conscience and humanity? The vindictive assaults of counsel for the prosecution upon Oberlin men and ideas, in general, were resented, not merely by them but, by all who were prompted by like feelings, and furnished just the stimulus needed to revive "the utmost fervor and strength" and "to kindle anew the smouldering embers" of the Republican party. The Fugitive Slave law, which had escaped criticism in Northern Ohio, after its first condemnation in 1850 and 1851, because no attempt had been made to enforce it, was now denounced anew in the pulpit, the press, in political conventions and public gatherings throughout the Reserve.[221] Judge Willson and the Democratic news-

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[220] *Supra*, pp. 50 to 53 incl.; 106, 108. In charging the jury in the Langston case, Judge Willson said, "Congressional legislation often becomes distasteful to a portion of the people of the country. It is so at the South with reference to laws enacted to suppress the slave-trade, and peculiarly so at the North with reference to the fugitive slave law of 1850. * * * It is the first duty of a jurior, who is sworn to determine the guilt or innocence of one charged with crime to divest himself of any and all prejudices he may have against the law itself, or of any partiality, or ill-will, he may have towards the accused. * * * This caution is given, Gentlemen, not because it is feared that you will *intentionally* swerve from a true and just line of duty, but simply that you may guard and brace yourselves against any undue influence while considering and weighing the evidence in the case."

[221] Rev. James A. Thome, pastor of the West Side Congregational Church in Cleveland, and President of the Board of Education, a native of Kentucky and the son of a slaveholder who had emancipated his slaves, said in a sermon preached April 17, 1859, speaking of the District Attorney, Judge and Jury in the Rescue cases, "They have awakened the indignation of the people against themselves; and have concentrated their sympathies upon the prisoners. They have done what they could to exasperate the citizens of Northern Ohio against slave-catchers, and against their Federal allies, the subalterns of a corrupt administration, stationed on this free soil to enforce an intolerable law. They have scattered firebrands in every part of this Reserve and they will have enough to do to quench the flames, especially if they persist in a course which can only add fuel and fury

papers and politicians were confronted with their own records made just after the enactment of the law and before the Northern wing of the Democratic party had become sub-servient to the slave

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to them." The *Independent Democrat*, Elyria, said, April 27, 1859, "These case are creating an unprecedented excitement throughout the North. From Maine to Iowa comes up the deep and earnest protest of a wronged and injured people who justly regard this case as a cool attempt on the part of the Federal Government to override all State authority and compel the Freemen of the North to become the menial servants of those who hunt human chattels. The response to *such* mandates—we will *never submit*." The *Oberlin Evangelist* said, April 27, 1859, "But the general government is under the control of slave holders. Of this fact, the nation perhaps needs more stirring proof. To bring out this proof, suffering and wrong must fall heavily somewhere on the friends of freedom and Christianity. It is well that it has fallen on those who shrink not from meeting the sacrifice." The Faculty and Trustees of Oberlin College issued a statement "To their Friends and Patrons throughout the Country," in which they said, among other things, "How long this persecution is to continue we have no means of knowing. If the extreme penalty should be executed upon all of the accused and other victims should follow, it would have no tendency to convince us of the righteousness of the fugitive act, nor can we give any guaranty that it would render man-hunting in our community more safe or more successful. * * * Our trials will, we trust be borne with cheerful patience, if by that means we can see the country aroused to shake off the tyranny now resting upon her. In this view of the case we cannot overlook the remarkable coincidence, that at the same moment when the Federal Courts at the North are inflicting severe penalties on those who, under the impulses of humanity, have rescued a fellow-man from bondage, at the South the same Courts are acquitting the pirates engaged in stealing men from their native land. * * * What can be more apparent than that the struggle between Slavery and Freedom in this country must soon terminate in the downfall of one or the other?" This was published in the *Oberlin Evangelist*, May 25, 1859, with this editorial comment, "Now this bitter war against Oberlinites is only a deadly blow aimed at the very vitality of Liberty. Pro-slavery Federal usurpation cares nothing for Oberlin as such. It is her *love of Liberty and hatred* of *oppression that must be crushed out.* It is the first great act in the tragedy of the Dred Scott decision in Ohio, which purposes to crush out liberty everywhere, if the people will only submit." The *Painesville Telegraph* said, May 12, 1859, "He must be shortsighted indeed who cannot see that such partisan decisions as the Dred Scott decision by the Supreme Court of Washington and such transactions as the District Court in Cleveland have been engaged in for several weeks past, must have the effect to awaken a sense of destestation and contempt with the people for all such malformation in the way of a Judiciary. These transactions are the sure precursors of revolution in these departments of our Government system." And again, July 28, 1859, "If our country ever frees herself from the crushing weight of the slave power, it must be by a determination of the people in the proper way to resist all unconstitutional efforts to compel them to sustain it; and to do this the people must know what their rights are, and how they have been invaded. The trial of the Oberlin Rescuers has done more than anything that has ever before transpired in this part of Ohio to inform the people upon the subject of State Rights and Federal encroachments. * * * The battles of Liberty must be fought again and again; and we may hope that an agitation, brought about by this and similar trials, will bring to the block of public opinion, and relieve from the cares of office, all who are for subverting our liberties and rights through unconstitutional federal legislation."

power.[222] In answer to the argument frequently advanced that the act was an essential part of the Compromise Measures of 1850 and that its enactment and strict enforcement were necessary to prevent a dissolution of the Union, men began to inquire whether the Union was worth saving at any such sacrifice of principle and such individual and community degradation.[223] The attempt to enforce the Fugitive Slave Law at the North excited all the more indignation because of the contemporaneous failure of United States Courts and juries at the South to convict, or even indict men guilty of open and notorious violation of the laws to suppress the

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[222] *Supra*, pp. 97 to 104, 106 to 108 incl. 2. Judge Spalding, at the beginning of his argument in the Bushnell case, read to the Court the resolutions drawn up by the committee of which Judge Willson was a member and passed at a meeting of Cleveland citizens in Oct. 1850.

[223] Joshua R. Giddings said, in answer to threats of secession made by Mr. Bryant of Texas in the winter of 1858-9, "These threats have lost their effect either upon gentlemen in this Hall, or upon the country. * * * We are not alarmed at threats of a dissolution of this Union. And when I said that I would vote for a resolution of repeal of the Texas annexation, if the gentlemen would bring it forward, I meant that he should understand me as candid and sincere in that declaration. And, sir, we have done for Texas what we have done for no other State in this Union. We have paid her debts, and that to the disgrace of the men who took the money from our pockets to do it. * * * We conquered that territory by the force of our arms and conferred it upon Texas." The *Ashtabula Sentinel* published this speech, Jan. 20, 1859, with the comment "That is the way to meet these fire eaters. Tell them to *go* whenever they talk of dissolving the Union." The *Painesville Telegraph* said, March 31, 1859, "We have been thinking for some time that one thing must be done or this Union will be dissolved, and that is, Slavery must be abolished in this land." The *Akron Beacon* said, April —, 1859, "It is about time the question was made whether white men in the free States have any rights which the negro-catchers are bound to respect, and whether the State, or the kidnappers, are sovereign upon the soil of Ohio." [Quoted in *Cleveland Leader*, April 22, 1859.] In a letter to Ralph Plumb, dated May 4, 1859, Giddings wrote, "The people, finding this government to have become '*destructive of the lives, the liberties and the happiness of its citizens, will Alter or Abolish it and organize its powers in such form as to them shall seem most likely* to effect their SAFETY and HAPPINESS." [Quoted in *Cleveland Leader*, May 6, 1859.] A Republican County Convention held at Salem, O., in May, 1859, passed the following resolution, among others:—

"*Resolved*, That if the unheard of doctrine of that court is to prevail as a sanction of law, that for one to counsel a legal and open investigation of the right of kidnappers to enter our borders and capture whomsoever their cupidity prompts—constitutes an offense, punishable under the provisions of the Fugitive Slave Act, then, have we reached the utmost verge of patience and meek submission, and are constrained with Patrick Henry to exclaim, 'is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery.' " [Quoted in *Ohio State Journal*, May 28, 1859.]

African slave trade. The cases of the slaver *Echo*, the yacht *Wanderer*, and other vessels landing slaves in Georgia, South Carolina and Florida were closely watched by Northern editors and politicians and the various failures of justice, pointed out and commented upon.[224] Even Democratic papers called

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[224] The *Cleveland Herald*, Aug. 13, 1858, quoted from the *Savannah Republican*, *Savannah News* and *Charleston Courier*, accounts of the landing of a number of Africans, variously stated at from 450 to 750, from the bark E. A. Rawlins. The *Cleveland Leader*, and *Herald* reported, Aug. 31, the capture of the Slaver Echo and landing of over 300 negroes near Charleston, S. C., and followed up the announcement with further particulars as to the seizure, the disposition made of the Africans and the prosecution of the guilty parties, quoting freely from Southern papers Sept. 1, 3, 7, 8, 11, 13, 22 and 25, 1858. A Charleston correspondent of the *N. Y. Herald* said:— "The slave crew were carried to our District jail this day handcuffed. Think of that!—Twenty men carried handcuffed through the streets of a slave-holding city by the President of the Young Men's Christian Association! And for what? For purchasing negroes in Africa and bringing them to the New World. For rescuing undying souls from the night of the heathen barbarism and transporting them to the full blaze of the Christianity of the Nineteenth Century." [Quoted, with similar passages from the *Charleston Courier*, and *Mercury* in the *Herald*, Sept. 3, 1858; and from the *Charleston News* and *Richmond Enquirer*, Sept. 7, 1858.] The philanthropy of the captors and the Southern planters was re-enforced by the facts, also stated in the Southern papers quoted, that the negroes were worth about $500 apiece and could be delivered on the coast of Cuba or Florida, at a cost of $10 or $15. They were sent to Liberia by the U. S. Government. [*Cleveland Herald*, Dec. 16, 1858.] The *Cleveland Leader*, Dec. 17, and *Herald*, Dec. 18, 1858, announced the landing of a cargo of 350 negroes from the yacht, Wanderer, near Brunswick, Georgia, and gave further particulars, quoting from the *Savannah Republican*, *Augusta* (Ga.) *Chronicle and Sentinel*, *Macon* (Ga.) *Journal*, *Augusta Dispatch*, *Columbus* (Ga.) *Enquirer*, Dec. 18, 23, 24, 29, 30 and 31, 1858. These negroes were scattered through the South—some being taken as far as Memphis—and sold for from $250 to $750 apiece, while slaves raised in Virginia brought from $1,000 to $1,500 each. The authorities succeeded in capturing but two of the lot, and the *Savannah Republican* [quoted by the *Herald*, March 1, 1859] proposed that the Governor of Georgia should take them and sell them at auction on the humane pretext that "this will be much better for the negroes than to be sent back to Africa by the Government." The Washington correspondent of the *N. Y. Post*, under date of March 28, 1859, said :— "African importations continue at the South, and evidence is before the government showing that a large amount of capital is invested in the business * * * defenders of the Administration say, 'Measures have been taken by the government to enforce the laws.' Whereas the simple truth is that the government has not and will not enforce the laws at the South. It will do it by force of arms in Boston, or New York, but not in a single slave State." [Quoted in *Cleveland Herald*, April 1, 1859.] The *Memphis Avalanche* said, April 9, 1859, "Three of the six native Africans brought here a few days since were sold yesterday * * * and brought respectively $750, $740 and $515. * * * These negroes are a part of the cargo of the yacht Wanderer, landed some months since." The *Cleveland Leader*, May 7, 1859, quoted this and said, "Mr. Buchanan gives his personal attention to trials of citizens of Ohio for violating the Fugitive Slave Law, but has no information regarding the slave trade opened between the coast of Africa and the South." The *Southern Guardian*, Columbia, S. C., said July 29, 1859, "A gentleman at Tallahassee, Florida, received a letter from Jacksonville on Sunday

attention to the utter disregard of these laws on the part of their Southern brethren, and warned them that they could not expect the North to comply with, or enforce the Fugitive Slave Law at the North, while they persisted in the South in ignoring the laws for the suppression of the African slave trade.[225]

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last, postmarked 18th, on the back of which was endorsed 'a cargo of six hundred Africans has been landed on the Florida coast, near Smyrna." [Quoted in *Cleveland Herald*, August 4, 1859.] The Washington correspondent of the *N. Y. Herald* said, "The African slave trade is meeting with great success on the coast of Florida and the Government has not taken the first efficient step to arrest it. * * * during the past year a large number of slaves have been landed and successfully transported into the interior of the country, and he estimates the late increase of slave population by importation since 1848 at over fifteen thousand!" [Quoted in *Cleveland Leader*, July 15, 1849.] See also *Cleveland Leader*, March 8 and 25; April 26; May 5, 9; June 25; July 30, and August 9, 1859; *Ohio State Journal*, June 4, 1859; *Summit County Beacon*, May —, 1859; *Ashtabula Sentinel*, Dec. 30 1858; *Ashtabula Telegraph*, Sept. 4 and 11; Dec. 18, 1858; Feb. 26 and May 14, 1859; *Guernsey Times*, March 24, 1859; *Jeffersonian Democrat*, Dec. 17 and 24, 1858, and Jan. 7, 1859; *Independent Democrat*, Dec. 22 and 29, 1858, and June 8, 1859; *Norwalk Reflector*, Sept. 21, and Dec. 28, 1858; and March 8, 1859; *Oberlin Evangelist*, May 25, 1859; *Painesville Telegraph*, Dec. 23 and 30, 1858; April 7 and 14, May 19 and June 9, 1859.

[225] The *Cleveland Plain Dealer* said, Dec. 15, 1858, "Slaves in the South are selling at an average of $1,000 per head. They can be procured from the African coast for about $125 per head, securing to the trade a profit of over 700 per cent. * * * The money making mad-men of the South are getting not only numerous and powerful, but methodical. They call conventions and pass resolutions denouncing the law of the United States prohibiting the Slave Trade as *unconstitutional.*' In this way they commence creating a public opinion to sustain their future action. Then comes the case of the slaver *Echo*, a full narrative of its capture being found in this day's paper, in which a South Carolina Jury refused to indict the crew, although there could not have been a doubt as to the evidence of their guilt. Lastly, a vessel makes its appearance freighted with Slaves from the African coast and meets with no difficulty in landing them where they are spirited away almost without observation. * * *

This is, undoubtedly, but the commencement of this nefarious traffic. The tocsin has been sounded throughout the South that the law prohibiting it is unconstitutional. The owner of the slaver *Echo* has been set at liberty by a Southern jury, and there is now no law to punish the offense. One cargo has been successfully landed, and others will follow fast." The *Nashville Banner* in speaking of these cases" [*Echo* and *Wanderer*] says, "We of the South complain of the North because the fanatics of that section rescue fugitive slaves from the custody of the U. S. officers. * * * *Our fanatics are even worse than the fanatics of the North, for they add the crime of perjury to their want of respect for the law.*" [Quoted in *Cleveland Leader*, April 26, 1859.] The *Logan Gazette* (Dem.) said May —, 1859, "But the Federal Courts which have refused to punish the murderous man-stealers of the South, have not only violated law; they have outraged our common humanity and deserve the execration of mankind. It is idle and worse than idle for Southern men to ask or to hope for a permanent continuance of this State of things. If they will not punish the remorseless villain whom the civilized world has agreed to designate a pirate, because the language offers no word more suggestive of the infernal, the North will cease to punish as criminals those who spit upon the Fugitive law and who, in the name of God, infract and disregard its require-

The *Weekly News*, Enterprise, Miss., April 14th, 1859, published an advertisement, signed by eighteen persons who refer to firms in Mobile, offering to pay $300 per head for one thousand native Africans between the ages of fourteen and twenty.[226] Not one of the officers or crews of these slavers was punished for his violation of the laws against the African slave trade. And no attempt was made, after the deportation of the negroes brought in by the *Echo*, to return other imported Africans to their native land.[227]

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ments. That law was always odious to the North, and to the whole North. * * * But if the South will do nothing for the enforcement of law, the preservation of harmony and the propitiation of a sentiment, which ought to be as native to the South as to the North, why, then let us henceforth bid the fugitive God-Speed! on his way to Canada, and vex no more with onerous prosecutions the men who aid him on his perilous road." The *Cincinnati Enquirer* said, April—, 1859, speaking of the acquittal of the *Echo* slaves, "The *Charleston Mercury*, the leading disunion paper of the South, supposes * * * every other case will be *Echo* to this. Suppose like considerations would influence juries and U. S. Commissioners at the North, on the hearing of the fugitive-slave cases? How would the *Mercury* like it? How would the South like it?"

[226] *Cleveland Leader*, and *Herald*, May 5, 1859. *Ohio State Journal*, June 27, 1859.

[227] The *Cleveland Plain Dealer*, Oct. 13, 1858, quoted an editorial from the *Columbia* (S. C.) *Guardian*, under the heading "A NOVEL VIEW OF THE SLAVER ECHO'S CASE," as follows: "The slaves on board the Echo were regularly sold by the Africans and purchased by the captain of the Echo. They were therefore his *bona fide* property, and we think the officers of the Dolphin committed piracy, if there be piracy in the matter by forcibly taking possession of property that did not belong them. * * * The crew of the Echo will be here in a few days. Let them come. We hazard the assertion that not a hair of their heads will be harmed." The *Ohio State Journal* said, April 26, 1859, "If the negro is rescued a United States Marshal packs the Grand Jury to indite the rescuer and the Petit Jury to try them, and regards it as his first duty to secure a conviction. * * * But the slaver Echo was captured with a cargo of slaves on board; the officers and crew taken to Charlestion and tried in the District Court; the evidence was conclusive and not contested at all * * * but the parties were acquitted. In Savannah a similar trial is pending. Mr. Lamar, of the Wanderer, admits having been engaged in the slave trade, declares that he shall continue in it, and defies the Government. No one expects his conviction." And again, May 13, 1859, "United States Laws against a traffic that is revolting to the humanity of the civilized world are treated as a mere farce. But at the North a failure to convict of a trespass on the fugitive slave law would cost the federal officers their places. The *Mississipian* said, May —, 1859, "Under these enactments the Echo prisoners have been indicted, tried and fount *not guilty*. We rejoice at this result. It establishes the unavailability of the laws interdicting the African slave trade so far as their enforcement depends upon the public sentiment of the South." [Quoted in *Ohio State Journal*, May 17, 1859.] The *Cleveland Plain Dealer* said, May 23, 1859, under the heading "THE UNION SPLITTERS," "At both ends of this Confederacy the Union splitters are at work. An American vessel, a slave trader, is caught in the very act of piracy upon the high seas. She is taken into a Southern port,

The Summit County Beacon said, May —, 1859:

"Men naturally ask, how is it that the Fugitive Slave Act of 1850 has swallowed up all other penal legislation of Congress? Why is it that the whole energies of the Government are put forth for the enforcement of *this law*, so that its infraction, in one jot or title, is visited with instant pursuit; while the pirates who bring slaves from the coast of Africa into our Southern ports, are subjected to the faintest and most languid 'make believe' prosecution, and discharged to new criminal enterprises of the same nature? * * *

"It is not without abundant grounds one may assert that a prime object of these rescue prosecutions is to awe the refractory men of Northern Ohio—who have a way of thinking for themselves and speaking as they think—to awe them into abject submission to the Fugitive Slave Law—and more than that, to the demands of insolent slave hunters, like this miserable Kentucky bloat, Anderson Jennings. * * * The slave importing pirates go unwhipt of justice, because slave traders like slave breeders are friendly to 'the institution.' But five and thirty God fearing citizens of Ohio, men devoted to peaceful pursuits and of unblamed life and conversation, are to be pursued, harrassed, imprisoned and despoiled of their goods, because in the exercise of ordinary Christian charity they rescued a black man from a gang of ruffians, whom they had every reason to believe bloody, lawless kidnappers. * * * In one point of view these Government trials are not without useful results. The Fugitive Slave law has always been odious, but nothing short of a trial under it could fully exemplify its devilish atrocity. That has been effectually done now. * * * Men utter their indignation against the infamous law and the officials who administer it, in tone of hearty indignation. Such expressions come from quiet men, not noisy politicians." Quoted in *Leader*, May 10, 1859.

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her crew arrested, tried by a Southern jury and acquitted. The law against piracy, which has been sanctioned by all parties and most scrupulously observed for half a century, is set aside as a thing of nought. * * * In the North, a law as old as the government, passed by the first Congress, the framers of the Constitution, signed by Washington and approved by Jefferson, is resisted on the ground that it conflicts with God's Higher Laws * * * thus the work of disunion goes on." And again, April 20, 1859. "The Telegraph says a verdict of ' not guilty' has been found in this case." [Slaver Echo] "What other verdict could be expected in such a case in such a country? What Oberlin is to the North, Charleston is to the South. The former has a law Higher than the Constitution, the latter a law lower than the Constitution." Also, *Cleveland Leader*, May 3, 19, 1859; *Ashtabula Telegraph*, April 2, and June 11, 1859; *Guernsey Times*, April 28, 1859; *Lorain County Eagle*, April 6, 1859; *Oberlin Evangelist*, May 25, 1859; *Western Reserve Chronicle*, May 18, 1859.

Not only was there a failure of justice in cases of African importations, but a very general protest in Southern newspapers against any attempt to enforce the laws interfering with the African slave-trade, and a general demand for the repeal of all such laws.[228]

Southern Conventions and public meetings listened to speeches and passed resolutions, demanding the reopening of the slave trade and denouncing the laws of the United States which interfered with the same, as unconstitutional, opposed to the material and political progress of the South and not deserving respect or obedience.[229]

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[228] The *Mississippi Democrat* said, Dec. —, 1858, "The repeal of the unconstitutional laws prohibiting the African Slave Trade is becoming a necessity in the South. Everywhere in the South we hear the cry. 'More Slaves!' Without an increase of slave labor the South cannot progress. With a large increase of slaves the South will progress and grow too powerful to heed the threats of the Northern dis-Unionists. No new territory can be of use to the South unless the present number of her negro slaves is greatly augmented, which can be done only by the repeal of the laws against the slaves, and the free importation of African negroes" Quoted in the *Jeffersonian Democrat*, Dec. 24, 1858. The *Guernsey Times* said, March 24, 1859, "The *Southern Citizen* proposes a remedy for the high price of negroes as follows: 'We know a way to remedy that state of things. Advertise for a contract to land some forty thousand Africans at some point between Savannah and the Sabine River within twelve months. There will, of course, be a risk of capture by the philanthropic pirates; and some of the negroes will be lost; but that is the whole risk; as for felony, piracy, and hanging, that's all over.' " The *Apalachicola* (Fla.) *Advertiser*, a prominent journal of the Southern Democracy, said, April —, 1859, "Until the slave trade is opened and made legal, the South will push Slavery forward as a seasoning for every dish and whether the North likes it or not, like the Spanish with the garlic, it will have to be tasted in every course on the table. This is the settled and determined policy of the party at the South." Quoted in *Ohio State Journal*, April 14, 1859. The *West Point* (Miss.) *Broad Axe* said, May —, 1859, "The re-opening, or rather the legitimizing, of the African Slave Trade along with the acquisition of Cuba are the very least results that the States Rights Party of the South will think of being contented with. * * * The exigencies of the times demand that it should be re-opened—every principle of justice and humanity concur with the practice." Quoted in *Ohio State Journal*, May 18, 1859.

[229] The *Ohio State Journal* said, May 17, 1859, "A meeting at Edgefield Court House, S. C., '*Resolved*, That the opening of the slave trade is a measure essential to the material progress, political power and social advancement of the South * * * That the laws in restriction of the foreign slave trade are dictated by a false and foreign sentiment, and, are not deserving therefore, of our obedience as a law abiding people.' A meeting in Claiborne County, Miss., resolved essentially the same. The following resolution was passed at a Democratic convention in Parker County, Texas, '*Resolved*, That we demur to any law of Congress making the foreign slave trade piracy as a usurpation of power, not warranted by the Constitution of the United States and ought to be repealed.' The Southern Convention at Vicksburg adopted a resolution that the laws prohibiting the slave trade ought to be abolished." See also *Ohio State Journal*, June 4, 1859.

In a 4th of July (1859) address at Augusta, Georgia, Alexander H. Stephens, who had always been regarded at the North as a moderate and conservative Whig not disposed to make extreme demands, boasted of the great progress already made by the slave power in the sixteen preceding years and advocated the acquisition by purchase or conquest of Cuba, Chihuahua, Sonora, and other Central American countries. Among the gains for slavery he mentioned the annexation of Texas which, he said, could be divided so as to make five slave States; the repeal of the Missouri Compromise, the defeat of the Wilmot Proviso, and the decision of the United States Supreme Court which made it possible for Southern men to settle in all the Territories with their slave property and be protected by the Constitution against interference by the Courts or Legislatures; and the passage of the Fugitive Slave Law, of 1850, which facilitated the reclamation of runaway slaves. He had been asked what were the prospects for the future. He would repeat what he had said in 1850, that there was very little prospect of the South settling any Territory outside of Texas, "unless we increase our African stock. * * * You cannot make States without people; rivers and mountains do not make them and Slave States cannot be made without Africans. Every restriction has been taken off of slavery, a fugitive slave law has been granted. There are more men at the North, today, who believe in the sound and moral condition of slavery than when he went into Congress." [sixteen years before.] His address was reported in the *Augusta Constitutionalist* and copious extracts from it appeared in the Western Reserve newspapers.[230]

[230] The *Cleveland Leader* said, July 19, 1859, "What he said becomes important from the fact that it undoubtedly presents, substantially, the slavery platform upon which the nominees of the Charleston Convention will be placed, and between which positions and those of the Republican party of the people of the United States will have to determine at the next Presidential election." The *Guernsey Times* said, July 28, 1859, "The Southern system of breeding negroes for the market

Mr. Stephens' address is mentioned first because it presented, what might be termed, the "irreducible minimum" of pro-slavery demands. The *Savannah News*, June —, 1859, reported a speech by Col. Gaulden, made to "one of the largest and most attentive audiences ever assembled in that city, met for the purpose of taking into consideration the repeal of all laws prohibiting the African Slave Trade." The *News* said:—

> "He showed most conclusively that both the negro and Southern white men would be benefitted by the revival of the African slave trade—the former in a moral, social and religious aspect, and the latter, in political and pecuniary advantages * * * and clearly exhibited to his appreciative auditory the entire *unconstitutionality* of the laws prohibiting the slave trade as was evinced in the unanimous and enthusiastic adoption of the resolutions published below."

Col. Gaulden offered the following resolutions, which were adopted unanimously, viz:

> *Resolved*, As the sense of this meeting, That African slavery is morally and legally right; that it has been a blessing to both races; that on the score of religion, morality and interest, it is the duty of the Southern people to import as many blacks direct from Africa as convenient.
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> * * * *
>
> *Resolved*, In the opinion of this meeting, the laws of the

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does not meet the wants and demands of these traffickers in human flesh and bones, and there is but one way left to supply the deficiency, which is, to revive the slave trade and import them in sufficient quantities fresh from their native land, Africa. * * * This is now the policy, open and avowed, of the whole Democratic party of the Union. Will the free people of the free States sustain them?" The *Jeffersonian Democrat* said, July 22, 1859, "No better evidence than this speech of Mr. Stephens is needed to show that the present political agitation in our country arises from a conflict of two entirely irreconcilable principles, and that it must continue until one of those principles shall prevail and 'crush out the other.'" The *Independent Democrat*, July 27, 1859, said, quoting Jacob Collamar of Vermont, with approval, "There is a set of men * * * who say the way to get out of all the difficulty on the subject of slavery is for us to stop talking about it. But can the talk stop? Did we make the occasion for talk? Did we annex Texas, and on purpose to add power to the slave States? Did *we* repeal the Missouri Compromise Act? Did *we* go in for Cuba and for fillbustering generally, wherever there is a chance to get slave territory? Do *we* go in for having the slave trade opened again? Our action has been and is wholly on the defensive. The aggressive movements come all from the other side."

general Government prohibiting the importation of slaves from Africa, are all unconstitutional and void, and of no effect except as a foul blot on the most cherished institution of the South, and that they ought to be repealed by immediate legislation.

A similar meeting was held at Waynesboro, Georgia, a similar address made by Judge Shawmake, and similar resolutions adopted.[231]

The *Savannah News*, July 12, 1859, gave a full report of a speech made by Hon. L. W. Spratt in favor of opening the slave trade. It sets forth in such glowing terms the superior "Kultur" of the South, and the glorious nature of the "super-man," engendered thereby, that a few extracts should be inserted here, to enable readers of this generation to understand more fully what led to civil war in 1861, and to its final outcome.

"In every State beyond the South, whose political action I have been allowed to look into, there have been causes to disturb *correct opinion*. At the North, there is a *responsibility to the masses*; and political actors there can have no opinions but those the masses—necessarily of humble capacities and tastes—permit them to express. But here there is the perfect possibility. * * * That which, among foreign men, distinguishes the noble and the peer, distinguishes the people in all the States and cities of the South. *They are of a ruling race;* they feel the responsibilities of that position, they are braced by the sentiments of that condition—and among men so situated—*among men without a master, but with the tone and temper of a master class,* it is that we may justly look for centres of correct opinion."

"My first reason for the advancement of this measure is, in the belief that *it will give political power to the South* and it is my firm conviction, that without political power there is no security for social and political right. The Constitution is insufficient to protect them, for a sectional majority may pass what acts they please, regardless of the Constitution. The Courts give no protection, for judges wear the ermine of that power whose acts they are to question, and they will be found, or they will be made, to hold accordant with the constitution, whatever acts a dominant majority

[231] *Cleveland Herald*, June 17, 1859.

may pass. * * * For minorities there is no other right but revolution."

"But, as equality was lost to the South by the suppression of the slave trade, so, would it seem, that the slave trade, would of necessity restore it. That trade reopened, slaves would come if not to the sea board, at least to the Western frontier, and *for all who come, there would be a direct increase of representation in the national legislatures. There would also be a broader base for the ruling race to stand on. 3,500,000 slaves support 6,000,000 masters now. Still more would give a basis for still more and every slave that comes*, therefore, *might be said to bring his master with him*, and thus, to add more than twice his political value, to the importance of the South.

"But to political power there is a necessity for States, as well as men, and slaves would quite as surely give them to us. Ten thousand masters failed to take Kansas, but so, would not have failed ten thousand slaves. *Ten thousand of the rudest Africans that ever set foot upon our shores, imported, if need be, in Boston ships, and under Boston slave drivers, would have swept the free soil party from the land.* There is not an abolitionist there, who would not have purchased a slave, at a price approaching the cost of importation, and so purchasing a slave, *there is not an abolitionist there who would not have become as strong a propagandist of slavery as ever lived.*"

"To an increase of power there must be population and of such a population as is necessary to extend the institutions of the South, there is no other source than Africa. Europeans will not come * * * into competition with our slaves, and while, therefore, they drift in millions to the North, they will not come to us. But if they should, it is to be feared they would not come to strengthen us, or to extend slavery, but to exclude the slave."

"I venture to affirm that there are no men, at any point upon the surface of the earth so favored in their lot, so elevated in their natures, so just in their duties, and so ready for the trials of their lives, as are the six million masters in the Southern States."

"When France shall reel again, as reel she doubtless will, into the delirium of liberty—when the peerage of England shall have yielded to the masses—when Democracy at the North shall hold its carnival—when all that is pure and noble shall have been dragged down—when all that is low and vile shall have mantled to the surface—when women shall have taken the places and habiliments of men—when Free

> Love unions and phalansteries shall pervade the land—when the sexes shall consort without the restraints of marriage, and when youths and maidens, drunk at noon day, and half naked, shall reel about the market places, the South will be serene and erect as she stands now—the slaves will be restrained by power, the masters by the trusts of a superior position. * * * and if there be a hope for the North—a hope that she will ever ride the waves of bottomless perdition that roll around her—it is in the fact that the South will stand by her and will lend a helping hand to rescue her!"[232]

On the other hand, conventions and public meetings were held in almost every county on the Western Reserve at which The Fugitive Slave Law was denounced in speeches and resolutions as unconstitutional, contrary to the laws of nature and the laws of God, and not to be obeyed. The speakers and resolutions took extreme States Rights ground, that the Constitution was a Federal Compact, conferring strictly limited powers on the government of the United States; that the Courts of the United States were not the sole judges of the Constitutionality of an act of Congress; that the citizens of Ohio were entitled to the protection of the State Executive and Courts in all matters touching their personal rights and liberty; and defiantly proposed to treat the Fugitive Slave Law as utterly void and of no effect. At the so-called "Felons' Feast," a banquet tendered January 11, 1859, by the citizens of Oberlin to the persons indicted for the rescue of John Price, to which many prominent citizens of Lorain County and Cleveland were invited, George G. Washburn,

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[232] Quoted in *Cleveland Herald*, July 20, 1859. A Prussian junker could not have put the issue between autocracy and democracy more bluntly. The editor adds, "The respectable confidence gentlemen of the North who believe with the General Whig Committee, that there is no danger of the opening of the Foreign Slave Trade, should subscribe for a few Southern papers, Hardly a paper comes from the Southern cities without more or less on this subject, showing that there is no play in this matter, but a sober earnestness that should set the people of the Free States to thinking." And again, July 26, 1859, "Will the North mark the progress of this question? The South, in two years, will present an undivided front in favor of the repeal of laws against slave piracy. * * * And mark further, the Democratic party will espouse the cause of the South."

editor of the *Independent Democrat*, of Elyria, offered the following sentiment which met with a hearty response:—

> "THE FUGITIVE SLAVE ACT—Making war as it does upon all that is manly in man, we will hate it while we live, and bequeath our hatred to those who come after us when we die. No fines it can impose, or chains it can bind upon us, will ever command our obedience to its unrighteous behests."

Ralph Plumb responded to the toast, "THE ALIEN AND SEDITION LAW OF 1798 AND THE FUGITIVE SLAVE ACT OF 1850—Alike arbitrary, undemocratic and unconstitutional" and, as part of his speech, read from the Kentucky Resolutions the following:—

> "therefore the act of Congress passed July 14th, 1798, entitled 'An Act in addition to an Act for the punishment of certain crimes against the United States, *and all other of the acts which assume to create, define, or punish crimes*, other than those enumerated in the Constitution, are altogether VOID and of NO FORCE, and that *the power to create and define such other crimes is reserved and of right appertains solely and exclusively to the respective States, each within its own territory.*"

and added, "Our country needs deliverance from the galling yoke of the slave power and it is near at hand." [233]

At a public meeting at Oberlin, April 13, 1859, Prof. James Monroe, Principal E. H. Fairchild and John M. Langston, brother of Charles Langston, made the principal speeches. The *Cleveland Leader* gave a report of the proceedings, April 26, 1859, and said, "Any outline of J. M. Langston's speech, as indeed is true of all the speeches, would fail to give an adequate idea of its thrilling effect."

The following were among the resolutions adopted:—

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[233] *Cleveland Leader*, Jan. —, 1859; *Cleveland Herald*, Jan. —, 1859; *Independent Democrat*, Jan. —, 1859. The italics are ours.

"3d. *Resolved*, That we hold, with Jefferson and Jackson, that the Constitution of the United States has not made the Supreme Court of the nation the ultimate arbiter of the Government, whether State or National, and *every private citizen must decide for himself whether any legitimate enactment or judicial decision be in accordance with or opposed to the fundamental law of the land.*

"4th. *Resolved*, That the Fugitive Slave Act is contrary to the spirit and teaching of our national Constitution, the principles of Christianity and the dictates of genuine Democracy.

"5th. *Resolved*, That we rejoice in the noble, humane and constitutional position assumed by the State of Wisconsin in her late conflict with the Federal usurpation—a position nobly maintained and reasserted by her people in the recent State election, and we earnestly desire and confidently believe, that our own Executive and Judicial officers in Ohio, will afford the same protection to our persecuted fellow citizens, and thus vindicate the honor and sovereignty of the State."

At a meeting in Painesville, April 25, 1859, called TO CONSIDER THE TREATMENT OF CITIZENS OF LORAIN COUNTY BY THE FEDERAL COURT AT CLEVELAND, Hon. John R. French said:—

"In the midst of these accumulating outrages upon the Sovereignty of the State, it is not strange that men are forgetting the true nature of our Federal Government. They forget that Government is Federal, in contradistinction from National. That it sprang from the *States* and not from the *People*, that it is a confederation of independent and sovereign States, for few and special purposes and those purposes clearly defined and carefully set forth in the written compact."

Hon. Wm. L. Perkins said:—

"The Constitution as now administered was made just for the purpose of catching run-away slaves. There is no power in the Government to enforce the law against piracy in the South; but if we, at the North, in any manner aid the fleeing slave over this puddle of water (pointing to the North) * * * the whole power of the Government, the Courts with political juries, and the Army are brought into requisition to bring the offender to account."

Among the resolutions adopted were the following:—

"The Fugitive Slave Law is not only clearly unconstitutional, but is also so repugnant to every principle of Justice and Humanity that no Constitution or Compact can make it binding; and so derogatory to the moral sense and self respect of a free and honorable people, that it deserves no argument, but only execration and contempt."[234]

At a public meeting, held April 28, 1859, at Alliance, Ohio, the following resolutions, *inter al.*, were adopted:—

"2d. *Resolved*, That upon the soil of Ohio, the citizen is indebted to the authority of the State for protection to person and to property, and the advantages generally accruing from civil government.

"3d. *Resolved*, Therefore that by every consideration which imposes allegiance to civil government *it is the duty of the individual in any conflict of jurisdiction between a State and the Federal Government to uphold the sovereignty of the State in which he resides against interference of the Federal authorities.*[235]

"5th. *Resolved*, That we call upon our fellow citizens throughout the State, through primary meetings like the present to give expression to public sentiment, that not only our own official servants, but the Nation and the world may learn whether they prefer to be the submissive slaves of the despotism which assails us, or live as freemen, or die in the attempt to do so."[236]

The Lorain County Republican Convention, held at Elyria, May 28, 1859, adopted the following resolutions among others:—

"3. It is absurd to contend, that the State Government is just as Sovereign within its sphere as the Federal Government is within its sphere, and yet make the latter the sole judge of the extent of the powers of both."

"5. The law of 1850 is further unconstitutional because it denies the right of trial by jury, and because it creates a swarm of petty judicial officers, the mode of whose appoint-

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[234] *Painesville Telegraph*, April 28, 1859; *Cleveland Leader*, April 28, 1859.

[235] The italics are ours.

[236] *Cleveland Leader*, May 2, 1859; *Jeffersonian Democrat*, May 6, 1859.

ment and compensation is contrary to the provisions of the Constitution; and said law is not only clearly unconstitutional but it is exceedingly partial, oppressive and inhuman.

"6. We agree with Henry B. Payne and the Democratic Legislature of 1851 that such a law can never receive the voluntary co-operation of our people."[237]

Similar meetings and conventions were held, and similar resolutions adopted, in Columbiana, Erie, Medina and Portage counties.[238] Perhaps the most sensational of all was one held at Jefferson, Ashtabula County, May 7th, 1859, called "To take into consideration our duty in relation to the trials now in progress before the United States Court at Cleveland, for an alleged violation of the Fugitive Slave Act, and take such measures as may seem proper to protect the rights of our fellow citizens and ourselves against the tyrannies of the Federal Government." Mr. Kellogg, who long represented this District in the State Legislature, made a stirring speeech, saying among other things:—

"The great question is now being determined by the people of this nation, and especially by the people of Ohio, whether or not a few slave holders shall not only lord it over the prostrate and down-trodden African, but shall also be permitted to place the iron hand of despotism upon the necks of the free men and women of Ohio, and especially of this Thermoplyae of Freedom, the Western Reserve."

After analyzing the Fugitive Slave Act and pointing out its objectionable features, he gave an account of the seizure of John Price and his rescue at Wellington, and put the question:—

"And now what say you, men and women of Jefferson? Shall the slave driver, or his more infamous hireling, the U. S. Marshal, be permitted to take from your village by virtue of that infamous enactment any individual, white or black, for the purpose of consigning such person to slavery? You say, NO! NO! and so said the men and women of Oberlin

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[237] *Independent Democrat*, June 1, 1859.

[238] *Ohio State Journal*, May 28, 1859. *Cleveland Leader*, April 25 and May 25 and 30, 1859. *Cleveland Herald*, May 24, 1859.

and Wellington. Aye! and so acted the men and women of Oberlin and Wellington, and for so saying and so acting, these free men and citizens of Ohio are now incarcerated, like common felons, in the jail of Cuyahoga County.

',The Supreme Court of Ohio, to whom we have heretofore looked with confidence to interpose the time-honored writ of right, the Habeas Corpus, and discharging our friends from an unlawful and unconstitutional imprisonment, has failed to meet our expectations.

"And now, fellow citizens, these are some of the reasons that have brought us together this evening, and it behooves us to consider well our responsibilities as free men and citizens, for upon the action taken by us on this occasion may and probably does depend consequences of great moment, not only to ourselves but to those that shall come after us."

He was followed by State Senator Darius Cadwell, who said, among other things:—

"Do we look upon these men" [the rescuers] "as criminals? No! Every man here respects them the more for what they have done. Which of you will not say with me, *I* would have done it, and as God is my helper, I will do it whenever an opportunity presents itself.

"Hiram V. Willson is Judge of the Northern District of Ohio. In 1850, he could denounce the Fugitive Act, as unchristian and unconstitutional and ought not to be obeyed or respected * * * yet now, dazzled with the glittering of official gold, he presides over these trials, in a manner that makes the reputation of Scroggs and Jeffries respectable. And District Attorney Belden persecutes with the malignity of a viper, to atone for his apostacy to the Democratic party in 1848—a jury is packed to aid them, composed of just such men as are sent up there for jurors from this County, men who are never deemed worthy of any trust in the community where they live, and thus more credit is given to Jennings as a witness—when he stands there confessing his infamous occupation—than to a score of as pure and truthful men as ever breathed the air of heaven. * * *

"The Slave Power construes the Constitution for us, and its tools among us seek to enforce their construction. Every law of Congress that conflicts with, or in any degree interferes, with slavery is held to be a violation of the Constitution, and is utterly set at defiance by the South, if not formally pronounced void by the Federal Judiciary * * * The law which declares those engaged in the foreign slave trade,

pirates and worthy of death, is treated as nullity. Its open violators go unpunished and even unindicted, and responsible and influential traders and planters flauntingly offer through their public prints, to pay $300 a head for native born Africans, and when they do it, they know, as we know, that this government will not molest them, whatever they may do in that direction."

Commenting on the refusal of the Ohio Supreme Court to grant a writ of *habeas corpus*, in the case of Simeon Bushnell, convicted, and held in jail, but not yet sentenced, for a violation of the Fugitive Slave Law, on the ground that the District Court had not taken final action and that such action might render *habeas corpus* superfluous, he added:—

"The great object of *Habeas Corpus*, is to restore the imprisoned to the freedom of which he is unjustly deprived, and I would not postpone his delivery from captivity for comity's sake, did I believe that the individual or the tribunal illegally held him. Almost every application for a Habeas Corpus is made by a person who is held by some other *under color of law*; and I would not stop for a discourse on courtesy with a tribunal that thus persecutingly tramples under foot the dearest rights of our citizens. If it be true that the National Government intends to resist the execution of a writ of Habeas Corpus granted by our State Courts, then in my opinion, *the time has come to fight.* We have been accustomed to think that we had rights independent of the Federal Government. *If we have not, then we want no Federal Government, unless we want a monarchy.*"

Among the resolutions adopted were the following:—

"*Resolved*, That we deeply sympathize with our friends now in prison at Cleveland, for their devotion to liberty; and assure them that when the Judiciary of our State shall refuse relief the necessity for action by the people will become obvious and *no prison shall hold them.*

"That the enactment known as the Fugitive Slave Law was conceived by the enemies of the Union; it violates the spirit, as well as the express language of the Federal Constitution, in its terms; it is wantonly insulting to a free people; it violates the rights of the States and is intolerably tyranical and oppressive in its character. No person possessing the spirit of freedom will respect or obey it.

"That if the people of the Western Reserve submit to such intolerance they deserve the name of Slaves.

"That in view of the circumstances by which we are surrounded, we call upon the people of our several townships, to hold meetings and take measures for an efficient organization of those who are willing to *act* in this hour of Freedom's peril—by reviving the ancient Order of the 'Sons of Liberty,' or adopting such other measures as shall best prepare us to meet the impending emergencies."[239]

The threat of forcible resistance to the United States authorities in these resolutions was unmistakable. But, not satisfied with that, as soon as they were adopted, Joshua R. Giddings, "the old war horse" as people of the Reserve delighted to call him, mounted the stand, explained that the "Sons of Liberty" was an organized body, in the days preceding the Revolution, who resisted the Stamp Act and forced the British Commissioner to resign his Royal Commission, and afterwards enacted the "Boston Tea Party," thus settling for the American colonies the principle of "No taxation without representation." He concluded by presenting a charter and by-laws of such a society, and after signing it himself asked all who valued their freedom to join him. Nearly a hundred names were enrolled on the spot. W. C. Howells, editor of the *Ashtabula Sentinel* and father of the novelist and literary critic, William D. Howells, wrote to the *Cleveland Leader*, "*These men will be heard from when wanted.*"[240]

This feeling, that a resort to force would be necessary to stop the intolerable execution of the Fugitive Slave Law in Ohio was spreading rapidly. The *Portage County Democrat* said, May 11, 1859,

"We are approaching the conclusion, that the peaceful influence of the ballot box will never restore our Government to the principles of freedom, justice and equity on which

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[239] *Cleveland Leader*, May 10, 1859; *Ashtabula Sentinel*, May 12, 1859; *Ashta-Telegraph*, May 14, 1859; *Portage County Democrat*, May 25, 1859; *Guernsey Times*, May 19, 1859; *Ohio State Journal*, May —, 1859.

[240] *Cleveland Leader*, May 10, 1859.

it was founded, and from which it has so far departed by the infusion of the tyrant power of the South aided by miserable, corrupt doughfaces of the North, and the scarcely less criminal conservative timidities.

"From the days of Magna Charta * * * down to the bloody strife on the plains of Kansas where freemen have triumphed what important advantage has been gained for freedom, what enlarged enjoyment of inalienable rights has been secured without direct or positive force, either in attack or defense?

"Let no cheek pale then, at the prospect in the not distant future, of a revolution *not bloodless*! The time has not yet come, but the doughfaced servility, and conservative timidity, and corrupt, cringing sycophancy of the times are fast hastening the day. Let the day come and God speed the right. RESISTANCE TO TYRANTS IS OBEDIENCE TO GOD!"

And in another place:—

"Let no man recklessly throw away his life or liberty. When the conviction becomes fastened universally upon the minds of the people that the ballot box has failed as a remedy, another remedy will be sure to be applied. What that remedy will be, time will develop. A forcible writer has said, 'Revolution is the Genius of the World.' "

On this same date the *Democrat* published a letter from Cleveland one and a quarter columns long, signed LIBERTY, describing the Court, counsel and prisoners and concluding as follows:—

"The shortest, best and most practicable method of disposing of men thieves who come prowling around our homes is to set them dangling at the end of a rope four feet from the ground. We must no longer submit to the despotism of the Federal government. Our wrongs we must right, if we can, through the Ballot Box, and if this fail us, then through the Cartridge Box."

The *Cleveland Plain Dealer*, May —, 1859, ridiculed these bellicose expressions, but the depth and sincerity of the feeling back of them was no longer to be disguised. Thoughtful men saw that to prevent dangerous collisions between local organizations and Federal authorities on some slight provo-

cation, the public sentiment must find orderly expression in, and be regulated by, a central organization, representing the whole Western Reserve. A call was issued, therefore, for a mass meeting to be held at Cleveland, May 24, 1859, addressed to "the foes of slavery and Despotism and the friends of State and Individual Rights," signed by over 500 prominent citizens, and published in all the Republican papers and such others as were in sympathy with the movement.

On the appointed day an immense crowd thronged the streets and public square of Cleveland. Thousands came on special trains over the Lake Shore, Cleveland & Pittsburg, Cleveland & Toledo, Cleveland & Columbus, and Cleveland & Mahoning railroads, and other thousands came in carriages or on horseback. It was an orderly crowd, and not the slightest disturbance occurred to discredit the assembly or injure the cause which was uppermost in the minds of all. The meeting was called to order by Judge R. P. Spalding, who concluded his address with these words of admonition:—

> "We have not met to set at defiance either the law or the officers of the law. We have met to manifest the will and determination of the people in a peaceful and constitutional manner. * * * Let us make known our rights and our determination to maintain those rights, even to the last issue; but as you value your position as Republicans, as members of that great party of the right, let good order characterize your doings and keep you from any illegal acts."

The Committee on Resolutions contained such representative men as Senator B. F. Wade, James Monroe, W. H. Upson, J. R. French, Peter Hitchcock, William T. Bascom, and James M. Ashley. The Committee on Permanent Organization contained men of nearly equal prominence, and one young man, thirty years of age, who was to distinguish himself equally in war and in peace, and who possessed, in rare degree, the qualities of a

scholar, a military leader and an executive officer—Jacob D. Cox, of Trumbull.

Letters were read from William Dennison, the Republican candidate for Governor, Thomas Spooner, of Cincinnati, Philip Dorsheimer, of Buffalo, N. Y., Cassius M. Clay, of Kentucky, and others. Thos. Spooner wrote:—

> "It is time that we had declared against a further extension of Slavery and that while we will not interfere with the rights of the States, we are determinedly fixed in our resolution, that the territories of our country shall be consecrated to free labor. * * * that we will hold sacred and inviolable the rights of all, to life and liberty who may obtain a foothold in the Northwest—that no longer will we countenance a Judiciary who will 'under safe precedents' give up to slavery those who are seeking freedom."

Mr. Dorsheimer wrote:—

> "I agree with you" [signers of the call] "that the aggressions of the Slave power, 'are sufficient to alarm every true patriot.' Every concession the North has made seems to have emboldened the South to make new demands * * * and finally Southern statesman seek to engage the Republic in an infamous and piratical traffic by the repeal of the existing laws against the slave-trade."

Cassius M. Clay wrote:—

> "I always hated and denounced the Fugitive Slave Law—not only because it violated the United States Constitution—the return of fugitives from labor being a duty imposed upon the Sates only * * * but because it violated all the safeguards of freedom, jeoparded the life, liberty and happiness, not only of the humble and hated African, but of every proud Saxon in the land and made justice a mockey in all its forms, and because it *humiliated and degraded our manhood*, and fitted us to be, ourselves, slaves, which our masters long since designed."
>
> "What think you of the decision of the Supreme Court that the black man has no right which a white man is bound to respect? What think you of their dicta that citizens of the free States are not citizens of the *United States?* What think you of the Dred Scott decision in its *real purpose*—that slavery is the only sovereignty in these States—in the language of the Kentucky and Kansas laws—*a man's right to*

his slave 'is higher than all laws and constitutions?' What think you of that sort of a 'Higher Law?'

"You intend to 'resolve,' to 'protest,' to 'denounce.' Is that all? Then go home and wear your chains! I say, *are you ready to fight?* Not to fight the poor Judge at Cleveland—not to fight the Marshal—not to fight the miserable packed jury—not to fight the tools of the Despots—but the Despots themselves! * * * Are you ready for that? If not, give it up now!"

"The 'Democracy' intend to *rule the Union, or ruin the Union.* I don't intend so far as I can prevent—so far as I can control or influence the Republican party, that they shall be allowed to do either. I want a man at the head of the party, who will be the *platform* of the party. I want no corn-stalk general, but a real general.

"When the slave-holders say if you elect a Republican President, we will dissolve the Union, I don't want any one to put off the evil day which would follow such event by saying, 'let it slide!' but some one who would stand by the tomb of Andrew Jackson and become infused to such extent with the spirit of that old patriot, that he would be ready to cry out * * * By the eternal—the Union shall be preserved * * * That's what I mean, by asking you are you *ready to fight*! If you have got your sentiments up to that manly pitch, I am with you all through to the end!"

Many speeches were made which interested the crowd, and moved them to laughter or applause. Mr. Giddings made one of his characteristic speeches and appeared more than any other to voice the sentiments of the assembled people when he said:—

"I would have a committee appointed to-day to apply to the first and nearest officer who has the power, that he shall issue a writ for the release of those prisoners [pointing to the jail]—not the men who have now been summoned to Columbus, but those who have not been sentenced. And I want to be appointed on that committee and if so, I will promise you that no sleep shall come to my eyelids this night until I have used my utmost endeavors to have these men released."

There was immense applause, and still more when he added:—

"If it was not for the Supreme Court of the State for which I have the utmost respect, *I would ask for no judicial process,*

but those men should be brought before you today. * * * I know that the Democratic press throughout the country has represented me as counselling forcible resistance to this law and God knows it is the first truth they have ever told about me.

"Now let all those who are ready and resolved to resist when all other means fail—when your rights are trampled into the dust—when the yoke is fixed upon your necks—and when the heel of oppression crushed your very life out—all those who are thus ready to resist the enforcement of this infamous Fugitive Slave Law—Speak out! [The roar which now arose from thousands of voices was deafening.]"

The Committee on Resolutions reported a preamble and seven resolutions. The preamble recited, *inter al.*:

"That the history of the government of the United States, as recently administered, is a history of repeated injuries and usurpations, all having in direct object the Africanization of this continent by the diffusion and establishment of slavery and the restriction and limitation of freedom. That the Dred Scott decision. reversing all the well-established rules which for ages have been the bulwark of personal liberty, yields its legitimate fruit in the recent atrocities on the Western Reserve."

The first resolution sets out that the Constitution and its amendments

"constituted a general government for special purposes, and delegated to that government certain definite powers, reserving to each State for itself the residuary mass of right to their own self-government; and that whensoever the general government assumes undelegated powers, its acts are unauthorative, void, and of no force, and being void, can derive no validity from mere judicial interpretation; * * * that this government created by this compact, was not made the exclusive or final judge of the extent of the powers delegated to itself * * * but that, as in all other cases of compact between parties having no common judge each party has an equal right to judge for itself, as well of infractions, as of the mode and measure of redress."

The others, in part, set out:—

"2d. That the law commonly known as the Fugitive Slave Law of 1850 was, in the opinion of this assembly, passed

by Congress in the exercise of powers improperly assumed;

"3d That one of the most alarming symptoms of democracy in the General Government, is the pliant subserviency of the Supreme Court of the United States to the objects of party politics, thus greatly diminishing that public confidence in the judiciary so essential to good order" [and this] "renders it incumbent upon the people to consider what measures are necessary to restore that tribunal to its ancient estate."

"4th. That, in the opinion of this assembly, an amendment of the federal judiciary system is indispensably necessary, so that the sovereignty of the States may be respected and individuals guarded from oppression. * * * it is strongly recommended that the life tenure of judges be abolished, and that the judicial office be limited to a term of years; that Congress so remodel the judicial circuits that a majority of citizens of the United States shall have a majority of the justices of the Supreme Court."[241]

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[241] To appreciate the feeling which prompted this resolution and others similar to it, passed by county and State Conventions, one should study the personnel of the U. S. Supreme Court. At the close of Jackson's administration, March 4, 1837, the Court consisted of seven Justices, four from the free States and three from the slave States. By act of Congress, two more Justices were authorized, and soon after his inauguration, Van Buren appointed Catron, of Tennessee, and McKinley of Alabama. As thus constituted, the Court consisted of four justices from the free States and five from the slave States and this division of appointments between free and slave States was maintained with brief intervals, from 1837 to 1861. John McLean was the only justice appointed from the Northwest prior to the inauguration of Abraham Lincoln in 1861. Such apportionment could not be based upon population, wealth, or the volume and importance of litigation originating in the respective sections. Its composition was such as to guarantee that the interests of slavery should be at all times protected. All but Benj. R. Curtis were appointed by Democratic Presidents. It was while such composition persisted that the important cases of *Prigg v. Pennsylvania*, 16 Pet. 539; *Jones v. Van Zandt*, 5 How. 215; *Moore v. Illinois*, 14 How. 13; *Dred Scott v. Sandford*, 19 How. 393; and *Ableman v. Booth*, 21 How. 506, were decided. See the following table for list of Justices appointed from 1811 to 1861:—

Nams of Justice	*State*	*By Whom Appointed*	*Date of Commissicn*	*Termination*	*Succeeded*
Joseph Story	Mass.	Madison	Nov. 18, '11	Died, 1845	Cushing
Gabriel Duvall	Md.	Madison	'11	Ret. 1833	
Smith Thomspon	N. Y.	Monroe	Dec. 8, '23	Died, 1843	Livingston
Robert Trimble	Ky.	Adams	May 9, '26	Died, 1828	Todd
John McLean	Ohio	Jackson	March 7, '29	Died, 1861	Trimble
Henry Baldwin	Pa.	Jackson	Jan. 6, '30	Died, 1844	Washington
James M. Wayne	Ga.	Jackson	Jan. 9, '35	1867	Johnson
Roger B. Taney	Md.	Jackson	March 15, '36	Died, 1864	Marshall
Philip P. Barbour	Va.	Jackson	March 15, '36	Died, 1841	Duvall
John Catron	Tenn.	Van Buren	March 8, '37	Died, 1864	Original
John McKinley	Ala.	Van Buren	Apil 22, '37	Died, 1852	Original
Peter V. Daniel	Va.	Van Buren	March 3, '41	Died, 1860	Barbour
Samuel Nelson	N. Y.	Tyler	Feb. 14, '45	Res. 1872	Thompson
Levi Woodbury	Mass.	Tyler	'45	Died,	Story
Robt. C. Grier	Penn.	Polk	Aug. 4, '46	Res. 1870	Baldwin
Benj. R. Curtis	Mass.	Fillmore	Sept. 22, '51	Res. 1857	Woodbury
John A. Campbell	Ala.	Pierce	March 22, '53	Res. 1861	McKinley
Nathan Clifford	Me.	Buchanan	Jan. 12, '58	Died, 1881	Curtis

The 5th condemns the recent proceedings in the Federal Court of this District as an "employment of the most disgraceful partisan means," to secure conviction, and as "without a parallel even in the modern history of despotism;" and proposed that a fund be raised by individual subscriptions of one dollar each to be collected and applied by "three commissioners appointed by this assembly to be called *Commissioners of the Liberty Fund*" for the relief of the prisoners.

> "6th. That our fellow citizens of Lorain County, who are now in jail * * * are entitled to their liberty, and must have it, peaceably and in conformity with the rules of law;" [and constitutes] "Joshua R. Giddings of Ashtabula County, Herman Canfield, of Medina County, and Robert F. Paine, of Cuyahoga County * * * a Committee to sue out the writ of *habeas corpus* in behalf of said prisoners without unnecessary delay.
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> "7th. * * * that, stimulated as well by the wrongs and outrages which were the immediate occasion of this vast assemblage, * * * it is the manifest duty of Republicans everywhere to renew their united efforts with an energy not to be remitted until" [every branch of the federal government be restored to the] "pristine purity of *Jeffersonian Republicanism.*"

The formal work of the convention having been thus completed, Governor Chase was introduced and received with tremendous cheers. Much depended upon the tone of his remarks. The resolutions adopted were too tame to suit men of the stamp of Giddings and Clay, and some hoped for something more radical from the Chief Magistrate of the State. They were disappointed. With great dignity and soberness he stated:—

> "That he had not come to counsel any violence. The American people, having the control of all power by the ballot boxes, it was for them to do it in their legitimate way.
>
> "It was not necessary that we, the sovereigns of the land, should resort to any measures which could not be carried out at all times and under all circumstances. * * * We exist under a State Government and a Federal Government,

and if the Government does wrong, turn it out. Dismiss the unworthy servants and put in those who will do your will."

Speaking of *habeas corpus* proceedings for the release of Bushnell and Langston, then pending before the Supreme Court of the State, he said:—

> "If the process for the release of any prisoner should issue from the Courts of the State, he was free to say that so long as Ohio was a Sovereign State, that process *should be executed.*
>
> "We can reform the Judiciary, the Congress and the Administration, and although the process may be too slow to suit some of the more excited of the audience, yet none of them were so old that they might not see the operation of this remedy. He did not counsel revolutionary measures, but when his time came and his duty was plain he, as Governor of Ohio, would meet it as a man.
>
> "His deliberate judgment was that no person could be seized and captured while he was a citizen of any sovereign State, under the Constitution of the United States.
>
> "Let the courts be appealed to, and let them act in accordance with their consciences and their duty between themselves and their God. The great remedy is in the people themselves, at the ballot box. Elect men with back bone who will stand up for their rights, no matter what forces are arrayed against them."

Peter Hitchcock and Columbus Delano being called on, also counseled against violence of any sort. The latter said:—

> "We must try law first—law and patience—but with it all, a patience and perseverance that shall never die, for the suppression of wrong. If you have not such a Court as you want, *make* such a court by the ballot box, and your laws will be executed. You are here in solemn, thoughtful, earnest, manly, and solid determination to do right and naught but right. Go on in that course and God will be with you."

John M. Langston, a lawyer practicing in Oberlin, was introduced and said: "He hated the Fugitive Slave Law as he did the Democratic party, with a deep, unalterable hatred." He then went on with a clear, noble, bold utterance of sentiments which were clothed in as eloquent language as is

often heard upon the floors of the halls of Congress. The listeners forgot that he was a black man—he spoke a white language such as few men can speak:—

> "If you can't hate slavery because it oppresses the black man in the Southern States, for God's sake, hate it for its enslavement of white men. Don't say it is confined to the South, here it is on our neighbors and citizens. * * * As we love our friends, as we love our God-given rights, as we love our homes, as we love ourselves, as we love our God, let us this afternoon swear eternal enmity to the law. Exhaust the law first, for these men, but if this fail, for God's sake, fall back upon our own natural rights, and say to the prison walls 'come down, and set these men at liberty.'" [Cheers.]

Asa Mahan, former President of Oberlin College, said he

> "liked the Fugitive Slave Law. [sensation] He liked it because it could not be executed; and again because it was political death to the party that originated and executed it."

The number of persons present upon the square to listen to the speakers was, at the lowest estimate, from ten thousand to twelve thousand. From the speakers' stand an almost unbroken sea of heads covered the space all over that section of the Park from the fountain to the fences. The trees, fences, windows and steps of the custom house were crowded with interested spectators, the whole forming a congregation equal to several Fourth of July celebrations.

The proceedings were reported at length in the Cleveland Republican papers,[242] and, with more or less fulness, in other city and county newspapers.[243] The importance of the meeting was generally recog-

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[242] *Cleveland Leader*, May 25, 1859; *Cleveland Herald*, May 24 and 25, 1859.

[243] *Cincinnati Gazette*, May 26, 1859; *Ohio State Journal*, May 25 and 26, 1859; *Cleveland Plain Dealer*, May 24 and 25, 1859; *Ashtabula Sentinel*, May 26 and June 2, 1859; *Ashtabula Telegraph*, May 28,1859; *Guernsey Times*, June 2, 1859; *Jeffersonian Democrat*, May 27, 1859; *Independent Democrat*, June 1, 1859; *Norwalk Reflector*, May 31, 1859; *Oberlin Evangelist*, June 8, 1859; *Painesville Telegraph*, May 26, 1859; *Portage County Democrat*, June 1, 1859; *Western Reserve Chronicle*, June 1, 1859.

nized and the speech of Governor Chase, and the resolutions adopted, were generally commended.[244] Some of the more radical papers were not content with their moderate tone and with the slow process recommended for righting recognized wrongs.[245]

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[244] The *Cincinnati Gazette* said, May 26, 1859, after quoting from the editorial of the *Ohio State Journal*, "The grounds of all this excitement are, first, an odious statute, very widely deemed unconstitutional in many of its provisions, for the reclamation of runaway slaves on free soil, and secondly an intolerably tyrannical method of enforcing the law, in the particular cases recently arising on the Western Reserve. The Fugitive Slave Law, was, of purpose, made as offensive as possible to the North. It has never done slave-holders any real good, and it never will. * * * But when enforced by federal officials, after the manner Willson, Belden & Co., have chosen to adopt, it cannot fail to awaken intense popular indignation. It ought to do so." [Quoted with approval in *Cleveland Leader*, May 27, 1859.] The *Cleveland Herald*, said, May 25, 1859, "The African Democracy have our sympathy in their disappointment at the result of the doings of the Convention, but it was deemed utterly impossible—even to accomodate them—to tear down a jail, or 'groan' Federal officials. The 'Declaration' adopted by the meeting; the letters read from invited guests; the speeches made by the different orators; the respectability and good behaviour of the mass of thousands collected together under circumstances of Federal oppression and arrogance having no parallel in the history of Ohio, speak for the character of the meeting, the forbearance of the people of the Reserve, and the determination of the Republican party to 'right their wrongs' in a manner consistent with the spirit of our free institutions. * * * The slave States could not present such a gathering of law-abiding men, and let the case be reversed, and not a stone of a jail in a slave State would have remained one upon the other." The *Ohio State Journal* said, May 28, 1859, "The proceedings were pervaded by a spirit of determined resistance to the legal outrage that is being perpetrated against free citizens of Ohio, under the assumed sanction of the Constitution; yet that resistance is to be made effective through the just operation of law, and a resort to the Republican remedy, the ballot box. Never was there a more sublime moral spectacle than that presented by this assemblage of freemen. * * * Amidst all these incentives to violent and extreme action, amidst all these appeals of strong emotion and deep conviction of their wrongs, they looked beyond the impassioned hour, upon the clear future. They saw the ultimate triumph of THE RIGHT; and the sight inspired them with patience and forbearance, while it nerved them with fresh energy and determination." The *Ashtabula Sentinel* said, May 26, 1859, "The best possible order prevailed, though a deep feeling of the wrong that called the people together was manifest. The meeting proved that the people of the Reserve are sound to the core, determined to defend their rights; yet careful of preserving order." The *Oberlin Evangelist* said, June 8, 1859, "The tone and temper of the meeting was fervid, yet considerate, true to freedom, yet true also to good order. The doctrine maintained by the resolutions and by all the speakers is this—*The Fugitive Slave act unconstitutional and void, to be never obeyed, but to be resisted by all legal means until those means shall have been fully exhausted.* Beyond this point no definite action is taken. Evidently the speakers all felt a good degree of confidence that these means would prove effective." See also *Toledo Blade*, May —, 1859; Norwich (Conn.) *Courier*, June —, 1859; *Ashtabula Telegraph*, May 28, 1859; *Independent Democrat*, June 1, 1859; *Norwalk Reflector*, June 7, 1859; *Painesville Telegraph*, May 26, 1859.

[245] The *Portage County Democrat* said, June 1, 1859, "Not many communities, so highly and justly excited by flagrant wrongs, would have refrained from executing summary vengeance upon the authors of so much mischief, would have

One fact, that tended to tranquilize the meeting was that, in pursuance of the policy of first exhausting all legal remedies, an application had been made to the Supreme Court of Ohio for a writ of *habeas corpus* and the release of Simeon Bushnell and Charles H. Langston, who had been sentenced to imprisonment in the Cuyahoga jail, as well as to fines and Court costs. The case had been very ably argued on behalf of the prisoners by Hon. A. G. Riddle and by Christopher P. Wolcott, Attorney General of the State, the latter acting under instructions of Governor Chase. The Government was represented by U. S. District Attorney Belden and by Noah H. Swayne of Columbus, later a Justice of the United States Supreme Court, who submitted the case on their brief. A decision was expected soon. All of the Judges of that Court had been elected as Republicans and were known as anti-slavery men, and there was a general belief, shared by the Democrats, that the Court would grant the writ and discharge the prisoners.[246] The Supreme Court of Wisconsin had granted a similar writ, in the case of *Sherman M. Booth* v. *U. S. Marshal Ableman*, 3 Wisc. 13, and it is altogether probable that

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refrained from relieving innocent friends from unjust restraint of their personal freedom. But the day of vengeance was postponed. No prisons fell, no Hamans hung. But the day of reckoning will not always tarry."

[246] The *Ohio Statesman* (Dem.) said, May 26, 1859, in anticipation of such a decision,—"And what then? We apprehend the U. S. Marshal will at once take Bushnell and Langston into custody and proceed to carry out the order of the United States District Court. Gov. Chase must then come to the rescue and a collision will at once ensue. * * * The Democratic party of Ohio and all the Union-loving men of other parties will be found on one side, and the treasonable squad of Abolitionists and Disunionists on the other. The law of Congress will be sustained, and the traitors to their country, to law, order and good government, will be overwhelmed." The *Cleveland Plain Dealer* said, May 21, 1859, "We are prepared to see the Judges, raised into power by their subservience to the treasonable elements of the country, prostitute the sacred authority with which they are invested, to base purposes, to keep in the favor of those to whom they are indebted for their official position." And May 30, 1859, "If Langston and Bushnell are released, they will be immediately re-arrested by the Marshal of this District, who has gone to Columbus for that purpose. This will bring on the long-dreaded collision of authority, between the State and General Government, and force must meet force, and might make right."

the Ohio Supreme Court would have discharged the prisoners, except for the fact that the United States Supreme Court had decided in the case of *Prigg* v. *Pennsylvania*, that the Fugitive Slave Law of 1793 was constitutional, and had, only two months before, reversed the Supreme Court of Wisconsin in the Booth case, holding that no State Court could take a prisoner from the custody of a Marshal, or Sheriff, holding him by orders of a Federal Court, acting under authority of both laws, relating to fugitives from labor.

The decision of the Ohio Supreme Court was announced on May 30, 1859. Three Judges, Swan, Scott and Peck, held that the Fugitive Slave Law, or such portion thereof as the prisoners were charged with violating, was constitutional and that the prisoners must be remanded to the custody of the United States Marshal. Judge Swan delivered the opinion of the Court, but Judge Peck wrote a separate opinion. Judges Brinkerhoff and Sutliff dissented and wrote opinions, the first distinguished by its brevity, and the last by a very elaborate analysis of the Constitution and its spirit based upon contemporary evidence and early decisions of the Courts. The statement of the case, arguments of Counsel, and opinions of the Court occupy 249 pages of Volume 9 of the Ohio State Reports. The decision was naturally very disappointing to the majority of the people on the Western Reserve, but they accepted it as final, and immediately turned their attention to securing through political action what the Courts had denied them.[247]

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[247] The *Cleveland Leader* said, May 31, 1859, "It is the end of the legal controversy at this time. The free people can only take an appeal through the ballot boxes, State and National. This they will do. The struggle between Freedom and Slavery, Liberty and Despotism, is but begun." [Quoted with approval in the *Ashtabula Sentinel*, June 2, 1859.] The *Cleveland Herald* said, "On a question bristling, as this does, with so many difficulties, all should obey the scripture well and be 'slow to speak.' It is too grave a question to be disposed of on street corners and it is one in which, in forming an opinion upon, impulse should have no agency. *Res adjudicata*—the bulwark behind which the profession is so prone

The *Ohio State Journal*, May 31, 1859, expressed the almost universal feeling of Republicans, thus:—"Whatever may be the conflicting popular opinions upon the decision rendered by a majority of the Court, the people of Ohio will doubtless regard it as the deliberate judgment of the highest tribunal of the State and will respect it accordingly." Wade, Giddings, Langston, and some of the Western Reserve editors could not suppress their ill feeling.[248] The *Cleveland Plain Dealer* took delight in quoting the fiery language of these men before the decision was announced and calling on them to do as they

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to skulk—has, evidently, controlled the majority of the Judges. As an original question it has not been met by the majority, for Judge Brinkerhoff, in his opinion, says, 'A majority of my brethren, as I understand them, admit that, if this were a new question they would be with me, and they yield the strong leanings of their own minds to the force of the rule of *res adjudicata*!' * * * Why should our Supreme Court yield the 'strong leanings of their own minds' to any other tribunal? * * * The decision of the Federal Supreme Court should not control a State Supreme Court, for each Court is of the highest dignity. The melancholy truth is the majority did not do their own thinking." And on June 1, 1859, "How can the tyranny of prior decisions be more glaringly shown than by pointing to such able and honest lawyers as Judges Swan and Peck, who bow in obedience to prior decisions which, were the questions original ones, would not receive their assent?" and quote with approval from the opinion of Judge Brinkerhoff, "'So surely as the matured conviction of the mass of intelligent mind of this country must ultimately control the operations of the government in all its departments, so surely is this question not settled. When it is settled right, then it will be settled, and not till then.'" The *Norwalk Reflector* said, June 7, 1859, "Over the result the 'nigger driving democracy' will, of course, exult as they would at the enforcement of any other law that has for its object the crushing out of freedom. * * * Though the fugitive slave law and the tools who execute it in the most oppressive manner, are odious in the extreme, to every man possessing a single spark of the genuine love of liberty in him, yet the power that makes and moves them must be met and punished; and it will be done, if the Republicans prove true to the cause they have espoused. Thank heaven the ballot-box is left us. Let us stand firm and united then, and in 1860 we shall conquer the combined forces of tories and dough faces."

[248] The *Summit County Beacon* said, June —, 1859, "A cowardly and miserable sham conservative, speaking through the mouth of Joseph R. Swan, the voice of THREE base, timid, judges has remanded Bushnell and Langston to their illegal prisonment. Be silent who will, we choose to utter the honest indignation of one freeman in the State. The people of Ohio will REMAND those three Judges to their original and deserved obscurity, made more disreputable because of the opportunities thrown away to achieve a decent judicial fame." [Quoted in *Cleveland Plain Dealer*, June 3, 1859.] The *Painesville Telegraph* said, June 2, 1859, "We do not censure the judgment of these three men who remanded Bushnell and Langston to prison if it is their conscientious opinion. But God help them in their blindness."

had threatened;[249] but, again, the Ohio State Journal gave expression to the quiet determination of the masses.[250]

The Republican State Convention was held at Columbus, June 2, 1859, just four days after the decision of the Supreme Court in the *habeas corpus* case. The attendance was larger than at any previous convention. All felt the importance of nominating a strong ticket and building a strong platform. William Dennison was nominated for Governor. He was a most affable man with a charming manner and a fine presence and he had had the double training of a successful lawyer, and a highly successful business man. Probably no better choice

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[249] The *Cleveland Palin Dealer* said, June 3, 1859, "The last Ashtabula Sentinel contains the proceedings of a great banner presentation by the ladies (God bless them) of Ashtabula, to a committee of the 'Sons of Liberty' * * * Among many other revolutionary declarations made by Mr. Wade, we select the following:

'Ladies: I stand before you to-night, to say that those men of Oberlin and Wellington acted just as I should have acted, and will act whenever occasion presents itself. And more—I will seek opportunities to violate the Fugitive Slave Act. * * *

'Ladies and Fellow Citizens: The hour of trial has come. Twenty of our neighbors are in custody, for helping 'John' on to Canada. Now shall we tamely submit in the face of all our boasting and threats? *In the name of God let us be true to our words.* Let us be true to our professions and principles. IF THE SUPREME COURT OF OHIO DOES NOT GRANT THE HABEAS CORPUS, THE PEOPLE OF THE WESTERN RESERVE MUST GRANT IT—*sword in hand if need be.*'

"The Court has refused to release these prisoners and now the Ashtabulians have got to make good their word." And, on June 2, 1859, quoted from Giddings' letter to Ralph Plumb, dated May 6, 1849, " 'In disregarding this law the prisoners did right. Their error consisted in SPARING THE LIVES OF THE SLAVE CATCHERS. THOSE PIRATES SHOULD HAVE BEEN DELIVERED OVER TO THE COLORED MEN AND CONSIGNED THE DOOM OF PIRATES, WHICH SHOULD HAVE BEEN SPEEDILY EXECUTED.' " And, on May 31, 1859, "A dispatch from Painesville last evening, says, 'The bells of this city are now tolling on account of the decision of the Supreme Court today at Columbus.' So the end is not yet. 'Revolutions' says the *Leader* 'never go backwards.' Well, then, let the Revolution go on. * * * There is a Revolution going on in Italy, another threatened in Hungary * * * There is also a Revolution going on in Mexico, another in Central America, and one prayed for in Cuba. It is a pity that Black Republicans and Red Republicans in this freest of all countries cannot revolt if they choose to do so."

[250] The *Journal* said, June 14, 1859, "The idea that the Republicans of Ohio have sought or intend to seek redress for the palpable wrongs that have grown up under a perversion of law, based upon a misconstruction of the Constitution, in any other way than through the operation of constitutional remedies is absurd. The mass meeting at Cleveland about which so great ado has been made, proposed no other plan of action."

could have been made at this time. William Y. Gholson, of Cincinnati, was nominated for Supreme Court Judge. He was a Mississippian by birth, had inherited slaves, manumitted them and moved to Ohio, where he had made a fine record as a lawyer and as one of the trio of able Judges who first constituted the Superior Court of Cincinnati and gave it a high reputation, extending far beyond the bounds of city and State. The nomination of Judge Swan, who four days before had delivered the opinion of the Court in the *habeas corpus* cases, was urged by his friends contrary to his own judgment. He was complimented by a large vote; but, as he himself foresaw, his nomination was rendered impossible by his decision, which ran counter to the wishes and hopes of the majority of his party. His reputation as lawyer and jurist was of the highest, his character unblemished, and he was personally a lovable man. Under ordinary conditions, his renomination would have been a matter of course; but the majority of the delegates present felt that to renominate him then, was equivalent to endorsing his views on the Fugitive Slave Law, which the Republican party had determined to make the principal point of attack.[251] In the light of subse-

[251] The vote stood Gholson 217, Swan, 140 and blank 8. The *Ashtabula Sentinel* said, "Brinkerhoff and Sutliff had ably and nobly maintained the constitutional rights of the people, and the re-nomination of Judge Swan would have been a reproof to those two Judges. * * * Had they submitted to the decision, and re-nominated Swan, the party in Ohio would have disbanded and the old Guard who have for twenty-five years maintained the doctrines of Liberty amid defeat and persecution, would at once have reorganized upon their present doctrines." And again, July 21, 1859, "And if it will be of any satisfaction to the *Statesman*, we will assure it that whether the refusal to discharge Bushnell and Langston worked the defeat of Judge Swan before the Convention or not, it made his defeat certain before the people. Enough of Delegates were very free to say that he could not be elected." * * * "This will be the case with all who concur with him." The *Oberlin Evangelist* said, June 8, 1859, "A supreme judge is to be elected next fall in the place of Judge Swan when the people will be called upon to sustain or reverse this decision." The *Portage County Democrat* said, June 1, 1859, "With the people, under God, is the residuum of power,—with them is the remedy—that remedy is the ballot box—let that remedy be faithfully applied while a reasonable hope is left in that direction. Let Judges Brinkerhoff and Sutliff have an associate worthy of them." See also *Western Reserve Chronicle*, June 22, 1859.

quent events, it may well be said that Judge Swan did more by his unpopular decision, for his party, for his State and for the Union, than any other man in the year 1859.

The Cleveland and Cincinnati papers and Ohio State Journal ignored the real cause of Judge Swan's defeat, and rather attributed it to geographical considerations and dwelt on the undoubted merits of Judge Gholson.[252]

Among the resolutions adopted were the following:—

> "2. That the people of Ohio demand a reorganization of the Judicial Circuits of the United States, and that they be so constituted as to give every section of the Confederacy its just and equal voice in the Supreme Court of the United States; that provision be made for reviewing the decisions of the District and Circuit Courts of the United States, by appeal or writ of error and for securing fair and impartial juries in prosecutions for alleged violations of the laws of the United States.
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> "3. That, proclaiming our determination rigidly to respect the constitutional obligations imposed upon the States by the Federal compact, we maintain the Union of the States, the rights of the States, and the liberties of the people; and in order to attain these important ends, *we demand the repeal of the Fugitive Slave Act of 1850*, as subversive of both the rights of the States and the liberties of the people, and as contrary to the plainest duties of humanity and justice, and as abhorrent to the moral sense of the civilized world.
>
> "6. That we regard all suggestions and propositions of every kind, by whomsoever made, for a revival of the African slave trade, as shocking to the moral sentiments of the enlightened portion of mankind; and that any action on the part of the government or people conniving at, or legalizing that horrid and inhuman traffic, would justly subject the government and citizens of the United States to the reproach and execration of all civilized and christian people throughout the world."

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[252] The *Cleveland Herald* said, June 3, 1859, "The nomination of Judge Gholson is one of the best that could be made. The location is right; Hamilton County, by its size and the amount of law business, is entitled to one of the five Judges. * * * His nomination will give enthusiasm and satisfaction in the Southwest part of the State, while, under all the late excitements on the Reserve his nomination will ensure him the full Republican vote of the North."

The Democratic party nominated for Governor, Rufus P. Ranney, the strongest candidate they could have named, an able lawyer and debater, and ex-Judge of the Supreme Court, and all the more acceptable with the masses because he had not of late years been at all prominent in politics.[253] The rest of the ticket was comparatively weak, and a blunder was made, when Charles N. Allen, of Cadiz, was nominated for School Commissioner, "an office of all others, requiring mental cultivation, high literary acquirements and talent as an educator. Mr. Allen was a good party man and served well as Deputy U. S. Marshal and juror in a nigger case."[254] He was the man who served on the Bushnell jury while at the same time an officer of the United States Court.

The Democrats tried to make capital out of the refusal of the Republicans to renominate Judge Swan, but the issue was so clearly drawn between the Republican demand that the Fugitive Slave Law should be repealed and the Democratic demand that it should be obeyed, that this side issue cut no figure.[255]

The Democratic platform opposed the revival of the African slave trade, but ignored the fact

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[253] The *Western Reserve Chronicle* said, June 8, 1859, "Our opinion of Judge Ranney is that he possesses more talent than any man belonging to the Democratic party in this State, and that his personal popularity is great and deservedly so. In fact we know of no man belonging to the fugitive law party, whom we should prefer to see in the Gubernatorial Chair."

[254] *Cleveland Herald*, May 27, 1859; *Western Reserve Chronicle*, June 8, 1859.

[255] The *Ohio State Journal* said, June 7, 1859, "For the Columbus Democracy to get up indignation meetings because Judge Swan was not nominated by a Republican convention, when every one of them would have used their worst efforts to defeat him if he had been, and when they have a candidate of their own whom they will persist in running against Judge Swan, in any shape, would be a very cheap style of indignation. * * * But it is said by a few shallow Democrats, who would scalp Judge Swan much sooner than they would vote for him, that the independence of the judiciary is assailed because he was not renominated by the convention in order to sustain his decision on the constitutionality of the fugitive slave law. This truly would be a most singular way of preserving the impartiality of the Judiciary." And on June 8, 1859, "We deny the justice of any claim that a judge should be renominated, or *not* renominated, because of a particular decision.

that it was already open and that offenders were not being punished.[256] The 3d Resolution read as follows:—

> "*Resolved*, That the rendition of fugitive slaves, upon demand of the persons entitled to their services or labor, is a duty imposed on every State of the Union by the terms of the Federal compact; that laws passed by Congress to secure such rendition in 1793 and 1850, ought to be promptly and faithfully executed; and that the leaders of the self-styled Republican party, in Ohio, by a persistent disregard of the Constitution of the United States in this particular, have shown themselves unworthy of the confidence of well disposed, patriotic and peaceable citizens."

The 10th, as follows:—

> "*Resolved*, That we are opposed to conferring upon negroes, mulattoes, or other persons of visible admixture of African blood the right of suffrage, or any other political right, desiring that the laws of Ohio be made, and her destinies controlled, by white men exclusively, and for the paramount interests of the white race."

Thus the issue was squarely presented, and the campaign hinged on the question, shall the Fugitive Slave Law be enforced, or repealed. One of the telling arguments in favor of repeal was the fact that fourteen of Ohio's most reputable citizens were still languishing in a Cleveland jail for yielding to a charitable impulse to rescue a negro from the hands of rough men whom they believed to be kidnappers.

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[256] *Painesville Telegraph*, June 2, 1859.

THE CAPTORS OF JOHN PRICE INDICTED FOR KIDNAPPING

PROSECUTION OF OBERLIN-WELLINGTON RESCUERS ABANDONED

But legal remedies had not all been exhausted. Judge Carpenter of the Lorain County Common Pleas Court, had called the attention of his Grand Jury to the Ohio Statute to prevent kidnapping.[257] He said, *inter al.*—

> "The misdemeanor here defined, is the claiming of any black or mulatto, within Ohio, whether free or not free, to be a fugitive from service, or labor, and the getting, or attempting to get him out of Ohio before such claim can be legally proved, with intent to enforce the claim.
>
> "The Constitution of Ohio inhibits slavery, and regards all persons as free except criminals. * * * Who then is presumed to be free? Everybody! Every man, woman and child, in Ohio, of whatever birth, descent, parentage, complexion, or comformation, is presumed to be free. * * * In this position * * * I am upheld by the Constitution of this State as well as by that of the United States. Our Bill of Rights begins' Sec. 1. All men are by nature free and independent.' * * * Does any caviller pretend that the words, 'all men' * * * were meant to exclude blacks and mulattoes?"

He then went on to show that, whenever the Constitution was intended to exclude blacks or mulattoes, *e. g.*, from the privilege of voting, or the duty of serving in the militia, the word, "*white*," was used before the words, "male citizens." The necessary inference was that, when such a qualifying word was left out, all persons were included. He then proceeded to show that, admitting for the sake of argument that the Fugitive Slave Law was Constitutional, it was a penal statute and must be strictly construed; that any person claiming its protection, while engaged in seizing and carrying off any resident

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[257] Act of April 17, 1857, Ohio Laws, LIV., 221-2.

of Ohio, must comply strictly with its terms and any defect in the authority under which he claimed to act, would deprive him of the benefit of the law and justify interference on the part of any one suspecting that he was acting illegally.[258]

On February 15th, the Grand Jury, thus charged, returned true bills against *Rufus* P. Mitchell, Anderson Jennings, Jacob K. Lowe, and Samuel Davis, for kidnapping and attempting to carry out of the State, in unlawful manner, a negro boy named John Price.[259] A warrant was issued to the Sheriff of Lorain County on the same day and, acting under it, he arrested Jacob K. Lowe, at Grafton, April 4, 1859, and the others, at Cleveland, May 11, 1859.[260] A mistake having been made in the first name of Mitchell, a new indictment was found against the four, May 17, 1859, Mitchell being correctly named, in this, *Richard* P., and on the same date all were rearrested and released on giving a bail bond in the sum of $3,200, with O. S. Wadsworth, of Wellington, Joseph L. Whiton, of Amherst, and Malachi Warren, of Oberlin, as sureties.[261] On May 19th, the Judge set the cases for trial on July 6th, next. United States Attorney General Black instructed District Attorney Belden to defend these men indicted for kidnapping, and he appeared for them on May 19th, an act which called forth more indignant protests.[262]

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[258] This charge was published in the *Medina Gazette*, July —, 1859, and copied from that paper in the *Cleveland Leader*, July 7, 1859.

[259] *Cleveland Leader*, and *Herald*, Feb. 24, 1859; *Painesville Telegraph*, March 3, 1859; *Oberlin Evangelist*, March 16, 1859; *Cleveland Plain Dealer*, March 16, 1859.

[260] *Cleveland Leader*, April 21, 22 and 28; May 13, 14 and 17, 1859; *Cleveland Herald*, April 21 and 25; May 5, 12, and 14, 1859. *Cleveland Plain Dealer*, April 21, 1859; *Independent Democrat*, April 6, and May 18, 1859; *Lorain County Eagle*, May 18 and 25, 1859; *Portage County Democrat*, April 27, 1859; *Western Reserve Chronicle*, April 27, 1859.

[261] *Cleveland Leader*, May 18, 20 and 21, 1859; *Cleveland Herald*, May 18 and 19, 1859; *Cleveland Plain Dealer*, May 20, 1859; *Painesville Telegraph*, May 19, 1859; *Jeffersonian Democrat*, May 27, 1859; *Lorain County Eagle*, May 25, 1859.

[262] The *Cleveland Herald* said, May 16, 1859, "Look at the thing! Jennings comes from Kentucky on a private matter for his employer—a most disgraceful private matter—and gets into difficulty. Why should the United States so prompt-

Were the funds and power of the United States to be employed in defending all men indicted for violating the laws of Ohio? If not, why were man-stealers exalted above all other persons accused of crime?

The defendants were not willing to trust entirely to District Attorney Belden for their defense and engaged R. H. Stanton of Kentucky. D. K. Cartter was engaged to assist the Prosecuting Attorney of Lorain County, W. W. Boynton, afterwards Judge of the Supreme Court of Ohio, and not to be confused with Lewis D. Boynton. It was morally certain that, on the same evidence which was given at Cleveland, a Lorain county Judge and jury would convict all four defendants of kidnapping. The invalidity of both, the warrant given to Lowe and the Power of Attorney given to Jennings, and the lack of resemblance between Bacon's slave John, as described in the latter, and John Price of Oberlin, would have been argued with telling effect before a Court and jury, free from bias in favor of the Administration and the Fugitive Slave Law, and the defendants were unwilling to risk a trial with a possible sentence of from three to eight years at hard labor in the Ohio Penitentiary staring them in the face.[263]

Their Kentucky attorney seeing that his clients had nothing to gain by going to trial, or by further prosecution of the Rescuers, negotiated with Mr. Cartter a settlement of all litigation, by the terms of which, the United States was to enter *nolle prosequi*

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ly rush to his rescue, tendering to him the use of government lawyers and government money in his defence? Is this the parental care that the Government exercises over all private citizens who, in the pursuit of private objects, overstep the bounds of criminal law and find themselves lodged in jail? Or is * * * the business of slave-catching * * * of such a character as to entitle its followers, above all other men, to the care and protection of our government?" See also *Cleveland Plain Dealer*, May 11, 1859; *Cleveland Leader*, May 20, 1859; *Ashtabula Sentinel*, May 19, 1859; *Ohio State Journal*, May 19, 1859; *Ashtabula Telegraph*, May 14 and 21, 1859; *Norwalk Reflector*, May 24, 1859; and *Independent Democrat*, May 25 and July 20, 1859.

[263] *Cleveland Leader*, July 6, 1859; *Cleveland Herald*, July 5 and 6, 1859; *Ohio State Journal*, July 8, 1859; *Independent Democrat*, July 13, 1859.

in all the remaining cases against the Rescuers and the Prosecuting Attorney of Lorain County was to do the same in the kidnapping cases. Belden, at first, refused to agree. He had sworn to "put Oberlin through" and was intending to do so, cost what it might. But on an intimation from Stanton that if he persisted, his Kentucky witnesses would probably be *non est inventus*, when the next case was called in Cleveland, he yielded, on condition that a statement and correspondence should be framed up showing that he had nothing to do with the negotiations and only consented at the earnest solicitation of his witnesses. On July 5th, 1859, the papers were all drawn up and signed. The District Attorney nollied the remaining cases against the Rescuers and the Kidnapping cases were dismissed. So ended what at the beginning had been trumpeted in the Plain Dealer as "THE FIRST SIEGE OF OBERLIN."[264]

The Democratic papers made loud moan over what they called "compounding of felony," a betrayal of his trust on the part of Belden, a failure of duty, etc.; but consoled themselves with the thought that the Rescuers had been punished as much by their eighty-five days imprisonment in the Cleveland jail as if they had been duly convicted and sentenced.[265]

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[264] *Cleveland Herald*, and *Plain Dealer*, July 6, 7 and 8, 1859; *Cleveland Leader*, July 7 and 11, 1859; *Ohio State Journal*, July 7, 8 and 9, 1859; *Independent Democrat*, July 6 and 13, 1859; *Portage Sentinel*, July 7, 1859; *Ashtabula Telegraph*, July 9, 1859; *Springfield* (Mass.) *Republican*, July —, 1859; *Portage County Democrat*, July 13, 1859; *Painesville Telegraph*, July 14, 1859; *Western Reserve Chronicle*, July 13, 1859; *Oberlin Evangelist*, July 20, 1859.

[265] The *Cleveland Plain Dealer* said, July 6, 1859, "So the Government has been beaten at last, with law, Justice, and facts all on its side, and Oberlin, with its rebellious Higher Law creed is triumphant. The precedent is a bad one." The *Portage Sentinel* (Dem.) said July 7, 1859, "We regret to learn, as we do from the Cieveland papers of last night, that U. S. Attorney Belden has nollied the indictments against the Oberlin Rescuers now in jail, on condition that the Oberlinites will nollie the indictments against the Kentucky witnesses who were arrested on a charge of kidnapping. This arrangement, which was made at the solicitation of the witnesses, is in very bad taste and unbecoming a Federal Officer." The *Mt. Vernon Banner* (Dem.) said, July —, 1859, "This arrangement, or compromise, we regard as nothing better than a disgraceful compounding of felony." [Quoted

The Republican papers exulted in the final triumph of the Rescuers, condemned anew the whole proceedings, and predicted that never again would there be an attempt to enforce this odious and inhuman law.[266] Before leaving the jail, after

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in *Independent Democrat*, July 20, 1859.] The *Lorain County Eagle* (Dem.) said, July 13, 1859, "The Republicans are making some very silly attempts to convince *somebody* that the Oberlinites have achieved a great triumph, and that the Government has 'backed down,' or something. * * * The law was enforced, Bushnell and Langston were tried, convicted and imprisoned. Thus far the *triumph* seemed to be altogether with the Government. * * * The Government has succeeded in punishing them all in the same degree as far as imprisonment is concerned and it is safe to conclude that such a miserable set of hair-brained fanatics have nothing to pay fines with * * * Then where is the backing down?"

[266] The *Cleveland Herald* said, July 6, 1859, "All this shows the virtue of self respect. The State of Ohio had rights and Lorain county was determined that these rights should be respected. This has put an end to nigger-ctaching in Northern Ohio. * * * It is exceedingly fortunate, we think, for all concerned, that the Kentucky men brought on their own counsel who had no axe to grind save the cause of his clients and who was unseduced by Federal pap, or unawed by Federal frowns." The *Cleveland Leader* said, July 7, 1859, "Never were a set of men worse used than have been Jennings, Bacon and Mitchell, the Kentucky slave owner and slave-catchers who tried to seize a negro in Oberlin, by the Government officials who sought to make a good thing out of it for themselves and for Democracy. The prosecutions were commenced without the knowledge or consent of those who claimed to have a running interest in 'John,' and they have been obliged to leave their homes repeatedly at the call of these officials, for the purpose of working the conviction of the objects of their political hatred and unrelenting prosecution. * * * these same valorous officials, who had been to Washington for orders and had pledged themselves to carry them out, are seen the day before the Court opens at Elyria, making the proposition to 'cry quits;'—to take back all their threats, and enter nollies against some twenty Lorain citizens, if by that means they could get their Kentucky friends out of the scrape and themselves too." The *Springfield* (Mass.) *Republican* said, July 7, 1859, "But what becomes of the sacredness of the fugitive slave law and the safety of the Union, in the presence of such a humiliating surrender of the lower law as this? * * * So ends the famous rescue cases and it may be safely set down as a fixed fact that they are the last of the sort in Ohio. The persecution of Christian men for showing kindness to runaway negroes is a losing operation socially and politically." [Quoted in *Ashtabula Telegraph*, July 9, 1859.] The *Portage County Democrat* said, July 13, 1859, "These suits were instituted and prosecuted from the beginning with a spirit that would not damage the reputation of the Evil one for *Devilishness*—and that they are abandoned now says plainly and beyond the point of controversy, that the aim designed to be accomplished has been defeated. The Democratic party have sunk capital instead of making it, the Federal officers have covered themselves with infamy and disgrace, instead of being able to enforce the infamous enactment they sought to do, on the Western Reserve. Instead of getting money out of the persecuted, the United States foots the bills." The *Painesville Telegraph* said, July 28, 1859, "The trial of the Oberlin Rescuers has done more than anything that has ever before transpired in this part of Ohio to inform the people upon the subject of State Rights and Federal encroachments; and the men who have suffered in purse and person, to disseminate that information should be sustained by us."

their discharge the Rescuers passed Resolutions thanking the Sheriff of Cuyahoga county, and Jailer Smith and his family for the kindness which had mitigated their troubles, and to the Attorneys who had nobly defended their cause and to the friends, far and near who by prayer and act had remembered them, and to the Press "which has given us constant and valuable aid." They further "*Resolved*,

> "That after all the pains and penalties inflicted upon us by Government officials in the attempt to enforce the fugitive Slave Act, we feel it to be our duty to say that our hatred and opposition to that unjust and unconstitutional law are more intense than ever before.
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> "No fine or imprisonment however enforced, by whatever Court, can induce us to yield it obedience. We will hereafter, as we have heretofore, help the panting fugitive to escape from those who would enslave him, whatever may be the authority under which they may act."

They then presented the wives of the Attorneys, the Sheriff and the Jailor, with some beautiful pieces of silver and Mr. Plumb, speaking for the prisoners, "requested them to place the gifts before their husbands, at meals, three times a day while they lived, that they might at such times, when surrounded by their families and those dear to them, when noble and generous feelings were sure to come, look upon the mementoes and remember the exciting scenes through which they had just passed."

The prisoners were not allowed to depart unnoticed and unattended. In the afternoon, about 5 o'clock, a hundred guns were fired, and several hundred citizens of Cleveland gathered at the jail to escort the Rescuers to the depot. At half past five, the whole company, headed by Hecker's Band, marched two and two, to the depot through Superior and Water Streets. As the train started, the Band played that appropriate air, "Home, Sweet Home." [267]

At Oberlin the entire town was out to greet

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[267] *Cleveland Leader*, July 7, 1859.

them; Professor Monroe welcomed them in an appropriate speech and then, headed by the Oberlin Band, the Fire Company and the Hook & Ladder Company in uniform, all marched to the First Church where the return of the martyrs was celebrated with prayers and thanksgiving, music by the choir of 150 voices and speeches by the venerable Father Keep on behalf of the home folks, and by Ralph Plumb, Professor Peck and James M. Fitch on behalf of the Rescuers. Then others from Cleveland, Elyria and Wellington spoke and the vast audience did not adjourn until midnight.[268]

The last and crowning ovation to the Rescuers came off on Monday, July 11th, when Bushnell, having completed his term, was released from imprisonment. As the hour approached for his departure an immense crowd gathered in and about the jail to see him off. A procession was formed, headed by a guard of colored men, followed by Hecker's Band and a long line of friends on foot, a carriage in which Bushnell and his baggage were placed and then a long line of carriages. The Cleveland Artillery Company preceded him to Oberlin and saluted him on arrival with a hundred guns. Another procession, more music, more speeches, prayers and thanksgiving. The procession was enlivened by the Hecker Band, of Cleveland, the Wellington Band, the Elyria Band and the Oberlin Band, the Cleveland Artillery Company, the Oberlin Fire Company, and the Hook and Ladder Company, all in uniform. The First Church was again filled with an enthusiastic audience, speeches were made by Prof. Monroe, Ralph Plumb, Joshua R. Giddings, D. K. Cartter, A. G. Riddle and R. P. Spalding, of Cleveland, Mr. Goodwin, of Sandusky, Professor James Fairchild and John M. Langston.

The feature of these public exercises which

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[268] *Cleveland Leader*, July 8, 1859.

most impressed visitors was the noble choir of 150 voices. Cleveland, Sandusky, Elyria and Wellington had their Bands. Speakers could be heard everywhere during political campaigns, although the one who made the most eloquent speech at Oberlin had been but seldom heard elsewhere before that day. But there was no body of singers anywhere in the State, with the possible exception of Cincinnati, which could compare with the Oberlin choir in freshness and volume of sound and in the finish and effect of its singing. Music had been a specialty in Oberlin from the time when Charles G. Finney first went there in 1834 and insisted that one of the eight professorships should be devoted to Sacred Music. Professor George N. Allen was appointed to fill that chair. Reporters from the *Cleveland Leader*, and *Herald*, had been in Oberlin before and knew something of the good things to be seen and heard, there; but reporters from the *Plain Dealer* and *National Democrat* were there for the first time, and it is interesting to note how greatly they were impressed. The more so, as they went to Oberlin strongly prejudiced against the place and the people.[269]

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[269] The *Cleveland Leader* said, July 12, 1859, "Of all the features of the day, there was nothing that was of more interest than the singing by the vast and well trainted choir. It was without exception the most grand and glorious singing—the nearest to our conception of a grand choral harmony of anything we ever heard. A lady remarked to us on the homeward passage, that she 'didn't believe we would hear better singing in the other world.' We do believe there is no choir like that one in the country. No words, no language can express the beauty and sublimity of the execution of the Marseilles Hymn, or [Professor Allen's] 'Gathering of the Free,' and so will not attempt it. It was beyond all praise." The *National Democrat* (both editors b eing present), said, July 12, 1859: "They [the Oberlin people] said their meeting pleased them—it certainly pleased us and we felt it was good for us to be there. The choir, composed of near two hundred persons, sang the Marseilles with thrilling effect — better, far better than we ever heard it or anything else sung." The Cleveland *Plain Dealer* said, July 12, 1859, "John Langston, the colored man and brother of Charles who was convicted, was the most eloquent speaker of the occasion. * * * But the dessert of the feast, which we purposely reserve to speak of last, was the Choir, led by C. H. Churchill, Esq. Talk of Sontag and her supporters, or Piccolomini, or Jenny Lind, or Strakosch, we have heard them all with stoic composure, but yesterday we surrendered at discretion on hearing the first piece." [The Gathering of the Free] by the choir. We pondered long on how we could get the piece

During the campaign, the Republican papers and speakers called attention to the record of Judge Ranney with reference to the Fugitive Slave Law, made in 1850 and 1852, and used his speech at Canfield, in October, 1850, and his letter to Judge Hoffman in 1852, as campaign documents.[270] Democratic newspapers and orators, on the other hand, pointed to the record of Mr. Dennison when as a delegate to a Whig State Convention and as a member of the State Legislature, in 1852, he voted, with his party, that the Compromise measures, including the Fugitive Slave Law, should be accepted as a final settlement of the slavery question and be rigidly enforced.[271]

Ranney was rather helped than hurt by this reference to his past history. His old associates

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repeated for we were sure they could sing nothing else that way. At length, solitary and alone, in the midst of the Choir a beautiful lady arose and struck the glorious Marseilles * * * and when she approached the chorus the whole galaxy of stars arose and sang together. Well, this sent us kiting to France, so that we hardly knew how the song ended. When we got back we distinctly recollect our resolution that if we ever went to Oberlin again it would be to hear the choir." The *Cleveland Herald* said, July 12, 1859, "The choir then sang the Marseilles Hymn. The solo was performed by Miss Church, who has one of the richest and most exquisite voices that ever came from human lips. Standing alone she sang until the burst of 'To arms, to Arms,' when the whole choir rose as one person, giving the Hymn an effect that at the head of the Franco-Sardinian army would lead that army over the walls of every city of the 'Historic Square.' The music by this choir was a treat seldom enjoyed, but never, when enjoyed, forgotten * * * * and as we saw a number of the devotees of the Federal Administration wrapped in admiration at the music, we mentally exclaimed 'Music hath charms to sooth a savage.' " The *Independent Democrat* said, July 13, 1859, "Not less than five thousand citizens of Lorain were on the ground, * * * No language is adequate to describe the enthusiasm which prevailed, and the cheers which greeted the eloquent orators fairly shook the walls of the old Church." The *Oberlin Evangelist* said, July 1859, "Once more, organ peals and song joined the universal joy, and perhaps the celebrated Oberlin Choir never before won such laurels as it did while rendering the classic 'Marseilles' and the piece entitled 'Gathering of the Free.'" The *Ashtabula Sentinel* said, July 14, 1859, "Mr. Giddings, who attended by special invitation, informs us that it was one of the occasions to be spoken of but not described."

[270] *Supra*, pp. 97 to 99 incl., 102.

[271] The *Cleveland Plain Dealer* said, June 30, 1859, "In '52 Mr. Dennison said that the Fugitive Slave act was essential to the 'integrity of the Union.' In '59 he says 'it is abhorrent to the moral sense of the civilized world.' When a man ceases to be consistent he ceases to be honest." But see *Plain Dealer* in 1850. *Supra* pp. 102 to 104 incl. and *Cleveland Leader*, July 6, 1859; *Painesville Telegraph*, June 9, 1859.

and acquaintances in the Reserve, felt that, regardless of the platform on which he stood, Ranney, himself, was at heart opposed to the Fugitive Slave Law and its most odious features. Indeed, he said, when twitted with his apparent inconsistency, that if he were in Congress he would vote to eliminate all such features and to so amend the law as to provide for a trial of the right of property in an alleged fugitive from slavery by a Court and jury of the District in which he resided and, to secure that, would grant him the constitutional right of every free person, the benefit of a writ of *habeas corpus*. Dennison suffered more, because the Republican party was composed largely of Whigs who bolted their party in 1852, because of its endorsement of the Fugitive Slave law. Such persons could not heartily support one who had compromised at that time, no matter what his opinions might be at the present. Ranney ran ahead of his ticket and Dennison ran behind, as a result of this comparison of records. The vote on Lieutenant Governor, which was a true measure of party strength, as distinguished from individual, showed a Republican majority of 14,747. Dennison's majority was 13,236, but he polled 23,925 more votes than Governor Chase did two years before.

Nominations for the Legislature were made with great care, as the election of a United States Senator to succeed George E. Pugh, would devolve upon it. The people of the Western Reserve cared more about this than they did about the governorship. They sent to the Senate such old and experienced veterans and such sturdy opponents to slavery extension as John F. Morse, of Painesville, who in connection with Townshend had forced the repeal of the Black Laws and the election of Salmon P. Chase to the U. S. Senate in 1849, Francis D. Parish, of Sandusky, the victim of the Fugitive

Slave Law in the case of Driskell v. Parish,[272] and Prof. James Monroe of Oberlin, who had served several terms in the House of Representatives. To these were added two young men, J. D. Cox, of Warren, and James A. Garfield, of Hiram, neither of whom were candidates for the position and neither of whom had had any legislative experience.

Jacob D. Cox was but thirty years old when elected Senator to represent the Trumbull and Mahoning District. He was a graduate of Oberlin College; went to Warren as Superintendent of the Public Schools in the fall of 1851; and began the practice of law in 1853, first as a partner of M. D. Leggett, and then as a partner of John Hutchins, who was elected to Congress in the fall of 1858. Mr. Cox had been active as a stump speaker in the Presidential campaign of 1856, and the Congressional campaign of 1858, and the people of Ashtabula and Mahoning counties, as well as Trumbull, had become well acquainted with him as a speaker and as a man. Upon his election as Congressman, Mr. Hutchins retired from active practice, and Mr. Cox was engaged in 1859 in establishing for himself a leading position at a bar, which embraced such lawyers as Matthew Birchard and Milton Sutliff, ex-Judges of the Supreme Court, Ezra B. Taylor, Frank Hutchins, and Joel W. Tyler. He had, as junior partners, Robert B. Ratliff, and William T. Spear, afterwards Common Pleas Judge and for twenty-seven years Judge of the Supreme Court of Ohio. He had no thought of entering politics as a candidate for any office, and had declined to allow his name to be mentioned in connection with the Senatorship. The Republican Senatorial Convention was held at Niles, August 22, 1859. Six candidates were formally presented —Samuel Quinby, Levi Sutliff, George F. Brown,

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[272] *Supra*, pp. 110 to 112 incl.

Charles W. Smith, Jesse Baldwin and Cyrus Bosworth, but, on the first ballot, seven delegates from Mahoning County voted for J. D. Cox, and on the third, he was nominated by a majority of 19 over all. Niles is only about five miles from Warren, and Mr. Spear, who was attending the Convention, drove rapidly to Mr. Cox's house in Warren and said, "Mr. Cox, you are wanted at Niles, right away," and they were well on their way there, before Mr. Cox knew why he was wanted.[273]

James A. Garfield was a graduate of Williams College (class of 1856) and returning to Hiram was elected teacher of Ancient Languages in, and two years later, President of, the Western Reserve Eclectic Institute, at that place. He, too, had no thought of entering public life and was not a candidate for any office.

Lyman W. Hall, editor of the Portage County Democrat, received the support of most of the Portage County men, but could not be nominated without help from Summit County which had candidates of its own. After several ballots without result, Mr. Hall asked his supporters to throw

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[273] The *Western Reserve Chronicle*, Aug. 24, 1859, reported the proceedings of the convention with the details of the balloting and the editor said: "The nomination of J. D. Cox, Esq., as the Republican candidate for State Senator has taken both the people and nominee somewhat by surprise. He has reason to feel highly flattered by this testimonial of the estimate in which he is held by the people of this District, for it was the spontaneous act of the delegates, themselves, without any solicitation whatever on his part, or that of his friends. He had refused some weeks since, to permit his name to be used by the press in connection with the office, on account of his private business, (which must suffer by his nomination) and the matter was supposed to be at an end. * * * Mr. Cox is comparatively a young man, but he has well and fairly earned a popularity second to that of no man in this District. * * * A finished scholar, an eloquent orator, well versed in the political history of the country, a ready debater, with wit as keen and trenchant as a Toledo blade; of indefatigable industry, quick and accurate in the transaction of business, and last but not least, a true Republican—ever ready to labor for the cause, he cannot fail to add strength to the ticket. The *Cleveland Herald* said, August 25, 1859, "The Senatorial Convention to nominate a Republican candidate for Senator to represent the District composed of Trumbull and Mahoning counties assembled at Niles on the 22d inst., and nominated J. Dolson Cox, of Warren. Mr. Cox is a young man and was a hearty and sincere member of the *Old Whig* Party. He is very popular wherever known, and will be elected by a large majority." See also *Cleveland Leader*, August 24, 1859.

their vote to a dark horse, James A. Garfield, who had attracted his attention as a public speaker and won his favor as a man. While Mr. Garfield had not been prominent in politics he had actively canvassed Portage and the adjoining counties of Trumbull, Summit, Ashtabula, Geauga and Lake, in the interests of his "Institute," had preached in most of the Disciple Churches in those counties, had addressed Teachers' Institutes and other gatherings on various subjects, and had thus become comparatively well known. He had then, as later in life, the gift of presenting any subject he chose to discuss in a most interesting way, riveting the attention of an audience and leaving a lasting impression.[274] The delegates gladly welcomed the suggested way of ending the dead-lock and Garfield was started on his eventful career. These two young men had become firm friends before either was nominated for the Senate and they roomed together during the sessions of the Legislature.

To the lower House the Reserve sent such veterans as Peter Hitchcock and Richard C. Parsons, the latter being elected Speaker.

The Republicans secured a majority of 15 in the Senate and of 12 in the House of Representatives, and elected Salmon P. Chase as United States Senator, to succeed George E. Pugh as the associate of Ben Wade. This may be considered as the direct result of the Democratic effort to enforce the Fugitive Slave Law in Ohio, and the revelation of all its

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[274] The author heard Mr. Garfield preach at the Church of the Disciples, Warren, O., in the summer of 1858, taking for his text the first verse of the first chapter of St. John. Although he remembers nothing of any sermon he heard before this, he has retained to the present day, a vivid impression of Mr. Garfield's manner of speaking and line of argument. The *Cleveland Herald* said, Aug. 25, 1859, "The Republicans of the Ohio Senatorial District, comprising Portage and Summit Counties, have nominated Prof. J. A. Garfield, President of the Western Reserve Eclectic Institute at Hiram, as a candidate for Senator. No better nomination could have been made. Mr. Garfield is a live man, and his intelligence and progressive character will secure him a prominent position in the Senate."

enormities, through six months of persistent nagging of the Oberlin-Wellington Rescuers. Cincinnati was, as usual, apprehensive of losing its Kentucky and Southern trade and Hamilton County sent a solid Democratic delegation to the Legislature. Southern Ohio, generally, was lukewarm, but the northern counties were almost unanimous in their endorsement of the Republican candidates and Platform.

The delegation from the Western Reserve remained firmly opposed to making further concessions of any sort to the slave-power.

While peace commissions from the several States had been appointed, on the invitation of Virginia, to meet similar commissioners from the South and were discussing more "Compromise Measures" with a view to placating slaveholders and preserving the Union, the young Senators, Cox and Garfield, were preparing themselves for the war which they felt was inevitable. Their evenings during the winter of 1860–61 were spent in the study of army regulations, infantry tactics and the great works on military strategy with their maps and plans of battle. Both believed that the limit of endurance, under the aggressions of the Slave-Power had been reached; that unless slavery was to be completely nationalized and protected, not merely in the territories but in the free States, a stop must be put to its further extension either by legislation or judicial interpretation; that the slave-trade in Africa must not be reopened and that slave-hunting in Ohio must be closed; that no more slave territory should be acquired; that the Fugitive Slave Law must be so modified as to allow any resident of a free State, claimed as a slave, the right to a trial by jury, and, if deprived of his liberty without such trial, the right to a writ of *habeas corpus* to bring him and his claim to be a freeman before a proper court in the District where he resided or was seized. Both believed that the campaign just closed had awak-

ened the people to the necessity for sturdy resistance to any further aggressions. During the fall and winter of 1860–61, both perceived the growing resentment among the people, of all parties and all stations in life, at the secession of State after State and the seizures by State militia of forts, arsenals, custom houses, mints, etc., belonging to the United States, and both believed that an act of war, which could not be misunderstood or explained away, would be regarded as a call to arms and would meet with ready and enthusiastic response. Such an act of war was the firing on Fort Sumter and the response was instantaneous. Cox was commissioned as a Brigadier General and Garfield as Lieutenant Colonel of the 42d Ohio, and both displayed military ability of a high order and attained the rank of Major General. But their subsequent history does not belong to this paper. It is doubtful if either would have entered public service, and it is certain that neither would have entered the military service, except for the attempts to enforce the Fugitive Slave Law in the Western Reserve in the fall of 1858 and the year 1859.

POSTCRIPT.

Sixty years have elapsed since the events described in the above paper. The progress of time enables us to make a more dispassionate, and, probably more correct, view of the things said and done, than was possible at the time. The anti-slavery man, when he found the Administration, Congress, the Law, and the Courts all against him and against what he believed to be right, was forced to exclaim "O miserable man that I am, who shall deliver me from the body of this death?" It is not surprising that he proposed desperate remedies and sometimes took the wrong course in trying to find a way out of his difficulties. Unless we can put ourselves in their place, we can hardly under-

stand how men of the Western Reserve could ever believe or assert that each man, or each community, was to judge for himself, or itself, whether a law was constitutional or not, and obey it, or refuse obedience, accordingly. That was the direct road to anarchy. We can hardly understand how any men—much less lawyers—could expect the Supreme Court of Ohio to reverse the Supreme Court of the United States, on a question of the Constitutionality of a law passed by Congress, or how they could expect a State Court to take from the prison a man convicted and sentenced to imprisonment by a District Court of the United States for violating a law of the United States. That road, followed a little further, would have led to judicial chaos and contempt for all Courts. How could they have ignored the plain provisions of the Constitution, that "the laws of the United States which shall be made in Pursuance thereof * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby anything in the Constitution of Laws of any State to the Contrary notwithstanding;" that Congress shall have power "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing powers and *all other Powers vested by* this Constitution in the Government of the United States or in any Department or officer thereof;" and that "The Judicial Power" of United States Courts "shall extend to *all cases* in law and equity arising under this Constitution, the laws of the United States" etc., and "between citizens of different States," *e. g.*, Kentucky slave-catchers and Ohio Rescuers? How could they have overlooked the fact that the government, the legislature and the Courts of the United States are *ours*, as well as the government, the legislature and the courts of Ohio? All may be changed from time to time, for better or for worse.

How could they have adopted the Virginia and Kentucky Resolutions of 1798–'99 and the South Carolina doctrine of Nullification, which could only lead to early disintegration and disunion? How could they have thought it possible—granting that such a course was desirable—for the State of Ohio with a poorly organized militia and without arms and equipment, to challenge the United States to an armed contest over the custody of prisoners committed to jail by one of its Courts? The United States then had a standing army well equipped and largely officered by Southern men under the command of a Southern Secretary of War. How long would it have taken Robert E. Lee and Joe Johnston, with two brigades of infantry, two regiments of cavalry and two batteries of artillery to have dispersed Giddings' "Sons of Liberty" and any other force which Governor Chase could have mustered? Ohio could not count on the assistance or even the sympathy of any other State in the Union, and—what was still worse—a majority of her own people would have been found opposed to the violence and disturbance of the peace, occasioned by what they would surely have regarded as the aggressive and irresponsible action of fanatics and men of one idea. There were indications that Democratic partisans would have welcomed an outbreak which would have called for the interposition of the Federal power. The result of such a contest—if initiated by volunteers or State militia—would almost surely have strengthened the Administration and established complete control of the Government, in all its branches by the slave-power, who could then have carried out their entire program in the United States and avoided the resort to secession. If Judge Swan had joined Judges Brinkerhoff and Sutliff, and the Supreme Court of Ohio had ordered the release of Bushnell and Langston, Governor Chase would either have had to use force and thus bring on a conflict with the United States, or would

have been obliged to back down. In either case, the State would have suffered and the prestige of the Republican party would have been damaged beyond repair. It would have been impossible then for that party, or any other formed on similar lines, to have commanded any large following and made successful opposition to a victorious and exultant slaveocracy. Judge Swan by his decision saved his State from humiliation, his party from ruin, and his country from the chains of an oppressive oligarchy which it was just beginning to loosen and was destined to cast off. Even those who rejected him as unworthy to be a Judge of our Supreme Court, must have rejoiced, later, that Judge Swan spoke "the words of truth and soberness," and that the odium of inaugurating civil war in this country was cast upon the South, when his advice was followed:—

> "The sense of justice of the people of Ohio has been shocked by some of the unjust provisions of the fugitive acts. It is not the authority of Congress to legislate that they deny, but it is the abuse of the power. That abuse may be remedied by Congress, and if the power to legislate is denied, the question can be put an end to by repeal—it is the only constitutional mode left; the other alternative is intestine war and resistance of our national government.
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> "All must admit that the owner of escaped slaves is entitled to their reclamation. Good faith to sister States demands it; and there would be no resistance in Ohio to a fair and just law effecting that object. No intense public feeling could be excited upon the question as to who should legislate, Congress or the States, if a proper law were passed by Congress.
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> "*I must refuse the experiment of initiating disorder and governmental collision, to establish order and even-handed justice.*" [275]

But, while we may criticise the various methods for curing the evils inherent in the Fugitive Slave Law of 1850, we cannot fail to see the force of their objections to the law itself and to the manner of its

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[275] 9 Ohio State Reports, 198. The italics are mine.

enforcement. We wonder how any set of men of Anglo-Saxon descent could have conceived and enacted such an unfair, unjust and inhuman law. Was there no man in that Congressional majority capable of putting himself in the place of a colored resident of a free State, liable at any time to be captured and reduced to slavery on a false affidavit of ownership? Was there no man who thought it unjust to deprive a man of the right to testify in his own behalf on a question involving his personal liberty? Was there no man who thought it unfair to take a man hundreds of miles away from neighbors, who had known him for years, before allowing any inquiry as to his status in life? Was there no man who thought it important that a man, denying that he was the slave of another, should have the right of a trial before a Court and Jury? Was there among them any man who, if jailed on an insufficient warrant, would not have sued out a writ of *habeas corpus*, in order to secure his release? It is almost inconceivable. Not one of that Congressional majority would have submitted, without a fight, to such treatment and disregard of his natural rights, as was prescribed by the Fugitive Slave Law. Not one of that majority would have suffered one of his friends to be so treated if he could possibly prevent it. The trouble was that pro-slavery men were so accustomed to seeing blacks and mulattoes treated as brutes, that they could not conceive of them as *men*, or entitled to the rights of *men*.

The pro-slavery Justices of the United States Supreme Court were blinded in the same way, and so placed a false construction on the Constitution of the United States, converting it into an instrument of oppression which it was never intended to be. They denied to the colored man the rights which the Constitution, properly construed, secured to all men.

In their eagerness, and supposed ability, to settle agitation of the slavery question, the Justices of that court departed from the rule, of answering only such questions as were essential to a disposition of the case before them, and discussed every question, social, political and moral, which ingenious counsel might raise in the course of an argument, and they could raise a good many in the course of the eight days (including hearing and rehearing) allowed for argument in the Dred Scott case. In that case, it was necessary to decide only one question. Was Dred Scott, the plaintiff, entitled to maintain an action in the United States Circuit Court for Missouri against Sandford, the defendant, a citizen of New York? He sued as a citizen of Missouri, under Article III, Sec. 2, of the Constitution which provides that "The Judicial powers shall extend to * * * controversies between * * * *citizens of different States.*" If Scott was a citizen of Missouri and Sandford was a citizen of New York, the Court had jurisdiction. If Scott was not, as he claimed, a citizen of Missouri, the Court could do nothing but dismiss his action for want of jurisdiction. There was an agreed statement of facts, covering less than a page of the reports, from which it appeared that Scott and his wife and two children were residents of Missouri, but were held there as slaves, under the laws of Missouri, by an army surgeon who sold them to Sandford just before the suit was filed. The Court below charged the jury "that upon the facts in this case, the law is with the defendant" and thereupon the jury found the defendant "not guilty," and made a special finding that the plaintiff, his wife and children were "negro slaves, the property of the defendant." Under the laws of Missouri a slave was not a "citizen" of that State; therefore, the United States Court did not have jurisdiction, and the case should have been dismissed. But counsel argued, and the Chief Jus-

tice and most of the Associate Justices discussed, all sorts of questions which were irrelevant and immaterial, if the Court had no power to try the case, such as the *status* of the negro in all ages and countries; the fact that he had always been regarded by the whites as an inferior being; questions, whether or not a free negro could become a citizen of the United States; whether or not, if he could become a citizen of one of the States under the laws thereof, he would be entitled to the benefit of Article IV, Sec. 2 of the Constitution, "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States;" the horror with which the people of a slave State would regard the presence of a free negro, citizen of another State, etc., etc., for 240 pages of the report. A majority of the Court decided, not merely that Dred Scott, under the agreed statement of facts and the special verdict of the jury, was not a citizen of Missouri and therefore his suit must be dismissed, but, that free negroes were not and never could become citizens of the United States; that he must be not merely a citizen of a State but a citizen of the United States, in order to entitle him to maintain his action; that the rights and privileges conferred by the Constitution did not and never could apply to free negroes; that the Constitution expressly affirms the right of *property* in slaves; that slaveholders could go into and remain in any territory of the United States, taking their slave *property* with them; that the Act known as the "Missouri Compromise," of 1820, was unconstitutional and void, etc.—in fact deciding, in advance of any case before them requiring such a decision, that every claim made by Southern slave-holders looking to the extension of their "peculiar institution," and all of the objectionable features of the Fugitive Slave Law were Constitutional and "righteous altogether." And from the time that decision was

announced, Senators and Representatives from the Southern States and pro-slavery Democrats in the North, insisted that these *obiter dicta* were a part of the law of the land and must be respected by all!

Now, there is not a word in the Constitution that limits citizenship of the United States to *white* persons; or that prescribes the qualifications of citizenship in the several States. There is not a word that limits the privileges and immunities of citizens in the several States to *white* citizens of another State. There is not a word in the Constitution, or the first twelve amendments, which limits the rights of a trial by jury and of *habeas corpus*, to citizens of the United States, either white or black. The word "person," is used sixteen times in the Constitution and nine times in the first twelve amendments. The "persons" mentioned in Article 1, Section 2, may be black or white, bond or free. When enumerated for the purposes of representation and direct taxation, "the whole number of Free *persons*," without any restriction as to race or color, except "Indians not taxed," are to be counted, and "three-fifths of all other *persons*"—again without restriction as to race or color. This, and the provisions of Art. I, Sec. 9 and Article IV, Sec. 2, make it clear that a negro is at least a "*person*," and entitled to all the rights, immunities and privileges of "*persons*," except as specifically pointed out in these or the other sections and amendments where "*persons*" are mentioned. There is nothing within the four corners of the instrument which declares, or even intimates that negroes were not at the time, or might not become, citizens of the United States or any of the several States, or that Articles of Amendment, V, VI, and VII should not apply to them. Article V says "NO PERSON shall be * * * deprived of life, liberty, or property without due process of law" and due process

of law must mean such process as is due alike to all persons.

The whole argument of the Chief Justice is devoted to reading into the Constitution and several Amendments, exceptions, restrictions and limitations that are not expressed, and cannot be implied from anything contained therein. He, then, amicably suggests "If any of its provisions" [*i. e.*, those he has read into the Constitution] "are deemed unjust, there is a mode prescribed in the instrument itself by which it may be amended." How can one amend by striking out something that is not there? How could the language employed in defining rights be made more general and comprehensive than it was? One sample of his reasoning must suffice. He argued that because New Hampshire *expressly* limited enrollment in the militia to "*free white persons*" the makers of the U. S. Constitution must have intended to limit all privileges of citizenship, etc., to "*free white persons.*" Many of the early State Constitutions (including that of Ohio) did limit citizenship, enumeration for representatives, etc., to "*white males.*" People of ordinary intelligence seem to have understood that if they wished to limit the duties and privileges of citizenship to *white* persons they must use the qualifying word "*white.*" In asserting that persons who did not use such qualifying word meant exactly the same as people who did, the Chief Justice announced a new rule of construction which makes the use of language to express ideas quite unimportant.

But faulty and oppressive as were the laws of the United States and erroneous as were the decisions of the Federal Courts, when those Courts pronounced a Federal state constitutional, there were but two remedies open to law-abiding citizens. (1) To get control of Congress and repeal the law, or (2) To elect a President who would appoint suitable persons as Judges of the Supreme Court,

and then ask the Court in a new case to overrule former erroneous decisions, as was done in the Legal Tender Cases.

The agitation over the Fugitive Slave Law on the Western Reserve, while at times threatening lawless or revolutionary procedure, was kept under wise control and resulted in a settled determination to cure the evils of Congressional legislation, Judicial interpretation and Executive enforcement of that hated statute, through the ballot and strictly Constitutional procedure. Southern leaders, foreseeing the inevitable (though deferred) outcome of this growing spirit in the North, hastened the glad day of deliverance, by seceding and making war on the United States. The Western Reserve and the whole Northwest were united in a patriotic and successful effort to save the Union. In the mighty struggle which followed, slavery and all constitutional provisions and Congressional laws intended for its protection, perpetuation and extension, and all pro-slavery decisions of the Supreme Court, were swept away, and North and South became, once more, a free, homogeneous and united people.

General Index